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Sup Ct

Vol. I.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 281

WEIGHTSTILL WOODS, COURT TRUSTEE,
PETITIONER,

vs.

CITY NATIONAL BANK AND TRUST CO., OF
CHICAGO, ET AL.

No. 282

WEIGHTSTILL WOODS, COURT TRUSTEE,
PETITIONER,

vs.

CITY NATIONAL BANK AND TRUST CO., OF
CHICAGO, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 25, 1940.

CERTIORARI GRANTED ~~JULY 29, 1940.~~

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No.....

IN THE MATTER OF GRANADA APARTMENTS, INC., A CORPORATION, DEBTOR.

WEIGHTSTILL WOODS, COURT TRUSTEE, ET AL.,
Petitioners,

vs.

CITY NATIONAL BANK & TRUST COMPANY OF CHICAGO, ETC., ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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INDEX.

Index to printed record of proceedings in U. S. District Court i

Clerk's certificate to Volume I of printed record of proceedings in U. S. District Court.....420A

Clerk's certificate to Volume II of printed record of proceedings in U. S. District Court..... 839

Index to proceedings in U. S. Court of Appeals:

Placita 841

Petition for leave to appeal, No. 6986..... 842

References to pages of printed record which contain Exhibits, A, B, C, D, E, and F, attached to petition for leave to Appeal..... 851

Reference to pages of printed record, which contain Assignment of Errors, cause No. 6986..... 852

Appearance for appellants, No. 6986..... 853

Answer to Petition for leave to appeal, No. 6986. 853

Reference to pages of printed record which contain order of Court of Appeals allowing appeal, No. 6986 .....853A

Order of July 1, 1939, approving appeal bond, No. 6986, ... 854

Appeal bond, No. 6986 855

Reference of printed record which contain citation, No. 6986 860

Excerpts from short record filed on July 19, 1939, No. 6986 860

References to pages of printed record which contain order of June 20, 1939 and order or decree of May 2, 1939 860

Praecipe for record filed June 29, 1939..... 861

Praecipe for short record filed on July 18, 1939 868
Certificate of Clerk 870
Motion for order extending time for filing transcript of record, No. 6986 870
Order of July 21, 1939, extending time for filing transcript of record, No. 6986 873
Appearance for Court Trustee, No. 7060 874
Appearance for appellant, No. 7060 875
Motion of appellants to consolidate appeals 6986-7060, etc. 875
Exhibit A—List of documents to be printed in consolidated transcript of record 880
Counter-motion of Court Trustee to dismiss appeal 6986 and answer and objections to the appeal and all motions and petitions by the appellants 886
Suggestions and authorities in support of counter-motion 890
Motion by Court Trustee that certain appellants be dismissed out of the proceedings, etc., No. 7060 893
Suggestion in Support of motion 894
Answer of appellants to Court Trustee's motion to dismiss appeal, No. 6986 896
Answer and counter-suggestions of appellant to motion by Court Trustee to dismiss appeal as to certain appellants, No. 7060 901
Exhibit A—Order of District Court entered Oct. 22, 1937 905
Exhibit B—Order of District Court entered Oct. 21, 1937 911
Reply by Court Trustee to counter-suggestions by appellants; and confirmation by Court Trustee of his motion to dismiss appeal No. 6986 913

Reply by Court Trustee to answer and counter-suggestions by appellant; and confirmation by Court Trustee of his motion to dismiss appeal No. 7060 as to certain appellants 916

Order of Oct. 4, 1939, denying counter-motion of Weightstill Woods, as Court Trustee, to dismiss appeal No. 6986 918

Order of Oct. 4, 1939, denying motion of Weightstill Woods, as Court Trustee, to dismiss certain appellants out of the proceedings, without prejudice, etc., No. 7060 919

Order of Oct. 4, 1939, consolidating appeals No. 6986-7060, etc. 920

Renewal of counter-motion to dismiss appeal No. 6986 and answer to motion for consolidation filed by Weightstill Woods, Court Trustee, No. 6986 923

Renewal of motion that certain appellants be dismissed out of the proceedings, No. 7060 939

Answer and response of City National Bank, etc., et al., to Court Trustee's renewal motion, No. 6986 943

Order of Nov. 27, 1939, denying renewed motion to dismiss appeal No. 6986 and denying renewed motions to dismiss appeal No. 7060, as to certain appellants, etc. 953

Hearing and submission of appeals 6986-7060, Feb. 23, 1940 954

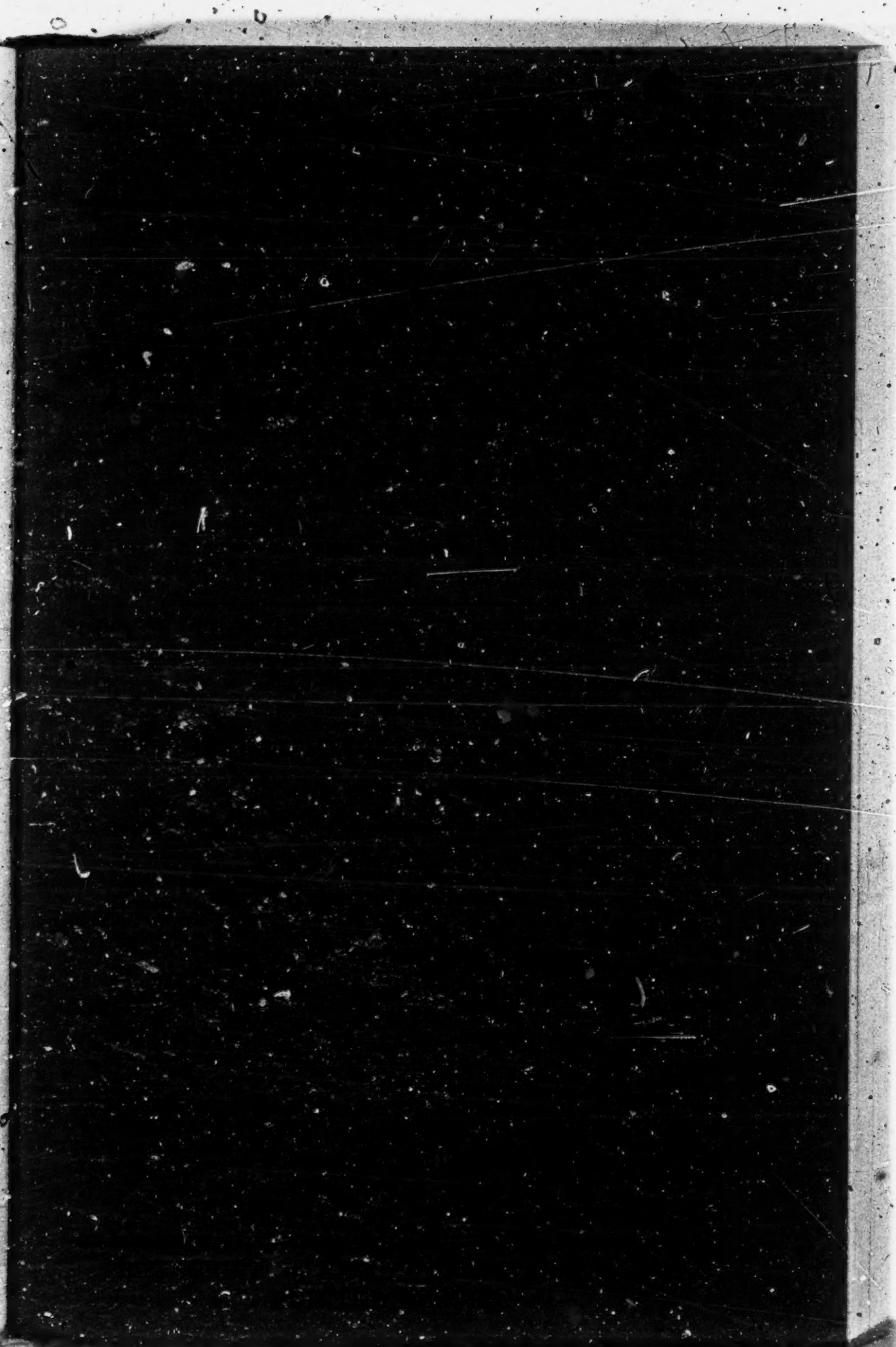
Opinion by Major, J., filed March 26, 1940, Nos. 6986-7060, 7061, 7186 and 7086 955

Order or decree, No. 6986, entered Mar. 26, 1940 .. 970

Order or decree, No. 7060, entered Mar. 26, 1940 .. 971

Petition for rehearing filed April 10, 1940, Nos. 6986, 7060 and 7061 973

Motion by Court Trustee that if rehearing is granted, he be granted leave to file a summary of evidence, Nos. 6986, 7060 and 7061 991
Suggestions to support motion 992
Answer to petitions for rehearing, Nos. 6986-7060, 7061, 7186 and 7086 996
Order of May 7, 1940, denying for petition for rehearing, Nos. 6986, 7060 and 7061 999
Notice, proof of service and motions by Court Trustee to stay mandates, Nos. 6986, 7060 and 7061 1000
Suggestions by Court Trustee 1002
Order of May 16, 1940, staying mandates and directing Clerk to transmit to Supreme Court the records sent to this Court by a special order, Nos. 6986, 7060 and 7061 1003
Notice, proof of service and motion by Court Trustee to stay mandates an additional forty days .. 1004
Suggestions by Court Trustee 1005
Order of June 15, staying mandates additional forty days, Nos. 6986, 7060, 7061, and 7086 1006
Motions to dismiss appeals for want of jurisdistion; and motions to retax costs filed by Weightstill Woods, Court Trustee, Nos. 6986 and 7060. 1007
Answer of appellants to renewed motions of Weightstill Woods, appellee, to dismiss appeals, etc. 1025
Order of July 3, 1940, denying motions of Weightstill Woods, Court Trustee, to dismiss appeals and retax costs 1033
Praecipe for record filed July 15, 1940 1034
Clerk's certificate 1037
Order allowing certiorari 1038



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IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

Nos. 6986 and 7060

IN THE MATTER OF GRANADA APARTMENTS, INC.,
A CORPORATION, DEBTOR.

CITY NATIONAL BANK & TRUST COMPANY OF CHICAGO, ETC., ET AL.,
Appellants,

vs.

WEIGHTSTILL WOODS, COURT TRUSTEE, ET AL.,
Appellees.

Counsel for Appellants:
MR. VINCENT O'BRIEN,
MR. JOHN MERRILL BAKER,
MR. TRACY WILSON BUCKINGHAM.

Counsel for Appellees:
MR. WEIGHTSTILL WOODS.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

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INDEX.

Placita 1

Order of May 17, 1937, approving petition as properly filed, consolidating petitions, appointing temporary trustee, etc. 2

Notice to creditors and stockholders 5

Order of May 20, 1937, approving bond of temporary trustee 6

Intervening petition of Charles S. Tuttle, et al., as a Protective Committee 7

Exhibit A—Deposit agreement dated April 25, 1933 9

Order of May 24, 1937, granting leave to Committee to file intervening petition and to file instanter its plan of reorganization, etc. 51

Plan of reorganization filed by Protective Committee. 66

Proof of claim of City National Bank & Trust Co. of Chicago, as Trustee 79

Proof of claim of Bondholders' Committee 82

Objections by Court Trustee to claims filed with Special Master 84

Report of Referee as Special Master upon filing of claims and objections thereto and acceptances of plan 85

Schedule of Claims and Interests of Creditors and Stockholders, etc. 89

Order of July 14, 1937, relative to claims, etc. 97

Order of July 12, 1937, continuing Weightstill Woods as temporary trustee until further order of Court, etc. 101

Acceptance of plan of reorganization 101

Order of July 14, 1937, confirming plan of reorganization 102

Order of July 15, 1937, amending order confirming plan of reorganization 110
Order of Aug. 30, 1937, granting leave to City National Bank & Trust Co. to file instanter its account..... 111
Report and account of City National Bank & Trust Co. as Trustee 111
Answer and counterclaim by Federal Trustee to petition of City National Bank & Trust Co. for approval of accounts, etc..... 126
Suggestions (objections) by Federal Trustee to surcharge and falsify accounts and deny all claim by City National Bank & Trust Co., its Committee and their counsel, and petition by Federal Trustee for general relief against respondent..... 127
Order of Sept. 14, 1937, granting leave to City National Bank & Trust Co. successor trustee, to file amendment to proof of claim, etc..... 140
Amendment to proof of claim of Successor Trustee... 140
Order of Sept. 14, 1937, granting leave to Weightstill Woods, Trustee, to file instanter petition to determine inter-hotel services 142
Order of Sept. 14, 1937, granting leave to Trustee to file instanter a petition to determine real estate taxes, etc. 142
Petition by Court Trustee to have determined compensation for services as to Arlington Hotel..... 143
Exhibit 1—Notice by Temporary Trustee dated June 15, 1937..... 145
Exhibit 2A—Letter, July 28, 1937, Woods, Federal Trustee, to City National Bank & Trust Co..... 146
Exhibit 2B—Letter, Aug. 13, 1937, The Arlington, Inc., to Woods, Trustee..... 147
Exhibit 2C—Letter, Aug. 14, 1937, Woods, Federal Trustee, to City National Bank & Trust Co..... 148
Exhibit 2D—Letter, Aug. 16, 1937, The Arlington, Inc., to Woods, Trustee..... 149

Exhibit 2C—Bill of Weightstill Woods submitted to City National Bank & Trust Co., Aug. 16, 1937 150
Petition of Defrees, Buckingham, Jones & Hoffman for allowance of counsel fees 151
Affidavit of Vincent O'Brien 153
Exhibit A—Statement of services rendered 154
Petition of Charles S. Tuttle, et al., as Bondholders' Committee, for allowance of reasonable expenses .. 156
Exhibit A—Statement of expenses incurred 164
Answer of City National Bank & Trust Co., as Trustee, to counterclaim of Weightstill Woods, Trustee 165
Answer of The Arlington, Inc., to the petition of Weightstill Woods, Trustee 169

CONDENSED STATEMENT OF EVIDENCE.

Colloquy 171
Witnesses for Court Trustee:
Bickel, John J., Jr. 183, 332
Clarke, Philip R. 335
Croxton, Hugh W. 268
Hubbart, J. Roy 173
Lenz, J. A. 262
Leonard, Arthur T. 230, 337
Loveless, Wait Reynolds 443
Parker, Claude S. 257, 293, 452
Schott, William H. 250, 280, 320, 450
Sturm, William G. 201
Tilney, Stanley D. 243
Toon, W. E. 328
Tuttle, Charles S. 317
Woods, Weightstill 342, 453
Witnesses for City National Bank and Trust Co.:
Bickel, John J., Jr. 411
Brittain, Joseph K. 367

Brooke, Irving E. 306, 439
Dauber, Oscar W. 389
Hall, Edward 402, 442, 461, 463
Hertzman, Irving L. 295
Hubbart, J. Roy 399
Johnson, Arnold M. 421
Kirkeby, A. S. 275
Mackie, Frederick John 397
McDonnell, Joseph T. 378
Murphy, William J. 421
Schanfarber, A. J. 358
Smith, T. P. 460, 462
Young, Gary 420

Witnesses for Bondholders' Committee:
Boerger, C. F. 464
Sturm, William G. 468

Witness on behalf of petitioners, Defrees, Buckingham, Jones & Hoffman:
O'Brien, Vincent 473

EXHIBITS OF COURT TRUSTEE.

Exhibit B, Summary analysis of cash accounts from January 4, 1935 to May 17, 1937 of the Granada Apartment Hotel 516
Exhibit J, intervening petition of City National dated January 22, 1935 521
Answer of C. S. Tuttle, et al., to the original petition of Sam Harris, et al. 525
Exhibit O-1, Release dated August 18, 1933 of International and Industrial Securities Corporation 529
Exhibit O-3, Granada Hotel appraisal of carpet, ozite, beds and cabinets made by J. A. Lenz dated September 24, 1937 531

Exhibit R, Report of William A. Schott dated September 10, 1937 531
Exhibit R, Memorandum of understanding between Chicago Trust Company and Cody Trust Company in regard to Granada bond issue 536
Exhibit U, Agreement dated October 1, 1927 between Granada Hotel Corporation and Frank E. Barton ... 537
Exhibit V (abbreviated), Circular of Chicago Trust Company 516
Exhibit V (abbreviated), Appraisal of Granada by Chicago Trust Company and Cody Trust Company. 540
Exhibit Y-1, Cashier's check of City National dated May 25, 1937 541
Exhibit Y, Letter May 25, 1937, Defrees, Buckingham, Jones & Hoffman to Weightstill Woods 541
Exhibit AA, Letter October 11, 1937, W. R. Loveless to Weightstill Woods 543
Exhibit BB, Comparison 550
Exhibit 2, Letter September 29, 1937, The Arlington, Inc., to Weightstill Woods 551

EXHIBITS OF CITY NATIONAL BANK AND TRUST CO.

Exhibit G, Transcript of proceedings in District Court before Judge Barnes on May 15-17, 1937 581
Exhibit J (abbreviated), First Mortgage Trust Deed dated September 21, 1928 from Granada Hotel Corporation to Chicago Trust Co 505
Exhibit K (abbreviated), Chattel Mortgage 509
Exhibit L (Description of), Chattel Mortgage Note secured by Chattel Mortgage, City National's Exhibit K 510
Exhibit M (abbreviated), Assignment dated January 3, 1935 of Chattel Mortgage and Note 510

Exhibit N, Decree of Sale entered in foreclosure proceedings in Superior Court of Cook County, Illinois, on December 18, 1936 511
Exhibit O, Petition of Central Republic Trust Company in Superior Court of Cook County, Illinois 608
Exhibit P, Order entered August 11, 1933 in Superior Court of Cook County, Illinois, re Receiver's Certificate 613
Exhibit Q, order entered August 23, 1933 in foreclosure proceedings 515
Exhibit R, Order entered March 16, 1934 in Superior Court of Cook County, Illinois 619
Exhibit S (abbreviated), order entered November 30, 1935 in foreclosure proceedings taxing Master's fees as costs 515
Exhibit T (abbreviated), Order entered February 11, 1935 in Superior Court of Cook County, Illinois re approval of final account and report of William L. O'Connell, Receiver of Central Republic Trust Company 621
Exhibit U, Agreement dated January 1, 1933 between Granada Apartments, Inc. and Warren-Hart Apartments Building Corporation 626
Exhibit W, Report dated October 7, 1937 of O. W. Dauber 627
Exhibit Z, Agreement dated February 9, 1924 between Arlington Apartment Building Corporation and Mateer Hotels, Inc. 632
Exhibit 1 (abbreviated), Portions of decree entered January 15, 1932 551
Exhibit 2, Memorandum dated January 31, 1934 of Samuel R. Lewis 561
Exhibit 3, Report dated August 14, 1929 of Samuel R. Lewis 562
Exhibit 4, Report dated January 31, 1934 of Samuel R. Lewis 570

Exhibit 5, Heating, water and refrigeration costs.... 575
Exhibit 8, Report dated September 21, 1937 of Irving E. Brooke.....504-577
Exhibit A-3, Appraisal dated July 31, 1933 by Chicago Seating Company 640
Exhibit 2, Charges and credits to Lincoln Park Manor with respect to heat, water and refrigeration, years 1930 to 1936, inclusive..... 646
Exhibit 3, Charges and credits to Arlington in respect of heat, water and refrigeration, years 1930 to 1936, inclusive..... 649
Exhibit 4, Heat, refrigeration and water costs..... 652
Exhibit 5, Excerpts from special report December 31, 1929 by Hotel Audit Bureau..... 652
Exhibit 6, Granada heat, light, power and refrigeration costs, month of December, 1930 and year ending December 31, 1930..... 653
Exhibit 7, Granada Apartment Hotel operating expenses, year 1931 654
Exhibit 8, Granada Apartment Hotel heat, light and power expenses for certain years..... 655

Suggestions and objections of City National Bank and Trust Co. et al. to decree, findings of fact, and conclusions of law drafted by the Court Trustee..... 722
Transcript of proceedings before Judge Barnes on July 14, 1938..... 761
Findings of fact and conclusions of law, filed May 2, 1939 769
Order of decree entered May 2, 1939..... 794
Notice of appeal..... 796
Statement of points relied upon..... 799
Certificate of Clerk of mailing copies of notice of appeal 814

Order of June 20, 1939, continuing cause to November 16, 1939, for final decree..... 815
Certificate of Clerk to transcript of record..... 816

PAPERS FILED AND PROCEEDINGS HAD IN THE U. S. CIRCUIT COURT OF APPEALS.

Assignment of errors (case No. 6986)..... 817
Order of June 22, 1939, allowing appeal (case No. 6986) 832
Order of Oct. 4, 1939, consolidating appeals Nos. 6986 and 7060 etc..... 832
Citation (case No. 6986)..... 834

1 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable John P. Barnes, District Judge of the United States for the Northern District of Illinois on Second day of May, in the year of our Lord one thousand nine hundred and Thirty-Nine, being one of the days of the regular May Term of said Court, begun Monday, the First day of May, and of our Independence the 163rd year. Placita.

Present:

Honorable John P. Barnes, District Judge.
William H. McDonnell, U. S. Marshal.
Hoyt King, Clerk.

Entered May 17, 1937.

33 And afterwards, to wit, on the 17th day of May, A. D. 1937, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

34 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

In the Matter of Granada Apartments, Inc., an Illinois corporation, Debtor.	No. 65811. No. 3008-D. In Proceedings for Reorganization Under Section 77-B of the Bankruptcy Act.

ORDER.

This cause now coming on to be heard upon the motion of Mort D. & Frank Goldberg, attorneys for the Granada Apartments, Inc., debtor herein, for the entry of an order finding its petition for reorganization under Section 77B in case No. 65811 filed in good faith and as properly filed; and the court having heard testimony in open court and now being satisfied that said voluntary petition for reorganization complies with the provisions of Sections 77A and 77B of the Bankruptcy Act of 1898, as amended and supplemented, and that the same has been filed in good faith and the Court now being fully advised in the premises,

It Is Ordered, Adjudged and Decreed that the voluntary petition for reorganization of the Granada Apartments, Inc., an Illinois corporation, filed on April 23, 1937, be and the same is hereby approved as properly filed and as having been filed in good faith.

And this cause now coming on to be heard upon the motion of the solicitors for petitioning creditors in the matter of the involuntary petition for reorganization of the Granada Apartments, Inc., filed in Cause No. 3008-D at Danville, Illinois on April 19, 1937 and the court having considered said involuntary petition for reorganiza-

tion and having heard testimony thereon and now being fully advised in the premises, doth order that the involuntary petition for reorganization of the Granada Apartments, Inc., an Illinois corporation filed on April 19, 1937, be and the same is hereby approved as properly filed and as filed in good faith under Sections 77A and 77B of the Bankruptcy Act as amended and supplemented.

It Is Further Ordered by this court that the voluntary petition filed as Cause No. 65811 in the District Court of the United States, for the Northern District of Illinois, Eastern Division and the involuntary petition filed as Cause No. 3008-D in the District Court of the United States, for the Eastern District of Illinois be and the same are hereby consolidated.

35 It Is Further Ordered by this court that a restraining order issue, restraining William A. Thuma, and and all parties interested in the matter of William A. Thuma, complainant, *vs.* Granada Hotel Corporation, et al., defendants, Superior Court of Cook County, Cause No. 519151 from further proceedings thereon, til the further order of this Court. It is also ordered that a restraining order be entered against all parties interested in the case of Edwin Rosenberg *vs.* Granada Apartments, Inc., General No. 37C 3704 now pending in the Circuit Court of Cook County, from further proceedings thereon.

It Is Further Ordered that the receiver appointed in the cause of Edwin Rosenberg *vs.* Granada Apartments, Inc., No. 37C 3704, Circuit Court of Cook County, turn over to the temporary trustee in this cause all books and records of the debtor herein.

It Is Further Ordered that Weightstill-Woods be and is hereby appointed as temporary trustee in this cause and that said temporary trustee upon taking possession of the property and assets of said debtor herein shall exercise all powers ordinarily exercised by receivers and trustees in equity in the District Court of the United States.

It Is Further Ordered that the bond of said temporary trustee shall be in the sum of Twenty Thousand Dollars ($20,000.00); that said bond is to be approved by this court.

It Is Further Ordered that the City National Bank & Trust Company as Trustee now in possession of the property of the debtor at 525 Arlington Place, Chicago, Illinois, by virtue of the terms and conditions of the first

trust deed on said property; and all of its servants and employees and any and all other persons having possession, custody and control thereof; shall forthwith and immediately surrender possession, control and custody of the aforesaid real estate, together with all monies now in the possession of the said trustee, the City National Bank & Trust Company, received from the operation of the said described property, together with any and all other property or assets of whatsoever kind, nature and description belonging to the debtor herein, now in the possession of the said City National Bank & Trust Company, as Trustee; to the said temporary trustee herein.

It Is Further Ordered that any and all other persons having possession, custody and control of any of the assets or property belonging to the debtor herein, shall forthwith and immediately surrender possession, control and custody thereof to the said temporary trustee herein.

It Is Further Ordered that a hearing be held in this cause on the 11th day of June, A. D., 1937, at the hour of 10:00 o'clock A. M., Daylight Savings Time, in the United States Court House at Chicago, Illinois, before the Honorable Judge John P. Barnes or before any other judge who may be hearing this matter in his stead,
36 at which time the Court may make permanent the possession of said trustee or may appoint a new trustee or trustees or may terminate the possession of said temporary trustee; that said debtor shall immediately give notice to the creditors, bondholders, stockholders and parties in interest herein of said hearing by mailing a notice of said meeting to all known creditors, bondholders, stockholders and parties in interest at the last known address of said bondholders, stockholders, creditors and parties in interest, and shall cause said notice to be published in the Chicago Herald & Examiner of Chicago at least once a week for two (2) successive weeks prior to the date set for said hearing.

It Is Further Ordered that the bondholders committee herein, and any of them having possession, custody or control of the names and addresses of the bondholders, creditors and claimants of the debtor herein, shall immediately deliver to said debtor, a complete list of said bondholders, creditors and claimants of the debtor herein.

That all matters not herein specifically provided for shall be determined by this court on the 11th day of June, A. D., 1937, at the hearing hereinabove mentioned and

that this Court shall take full jurisdiction over the debtor and all of the affairs of the said debtor, with full reservation to enter any and all orders necessary herein for the proper preservation and administration of this estate.

Dated this 17th day of May, A. D., 1937.

Enter:

Barnes,
Judge.

37 In the District Court of the United States, for the Northern District of Illinois, Eastern Division. In the matter of Granada Apartments, Inc., an Illinois Corporation, Debtor. In proceedings for Reorganization of said corporation under Sections 77-A and 77-B of the Bankruptcy Act of 1898, as amended and supplemented. No. 65811 and No. 3008-D.

NOTICE.

To All Creditors and Stockholders of Granada Apartments, Inc., an Illinois Corporation, Debtor. And All Other Interested Parties:

You and Each of You are hereby notified that a voluntary petition for the reorganization of Granada Apartments, Inc., an Illinois Corporation, under Section 77-A and 77-B of the Bankruptcy Act, No. 65811, has been filed in the District Court of the United States, for the Northern District of Illinois, Eastern Division and that an involuntary petition for reorganization of Granada Apartments, Inc., an Illinois corporation, under Section 77-A and 77-B of the Bankruptcy Act, No. 3008-D, has been filed in the District Court of the United States, for the Eastern District of Illinois, and that by order of the United States District Court, Eastern Division, entered on May 17, 1937, said petitions were consolidated and approved as properly filed and as filed in good faith.

You Are Further Notified in accordance with said order that a hearing will be held on June 11, 1937, at the hour of 10:00 A. M., Daylight Saving Time, before his Honor John P. Barnes, in the courtroom usually occupied by him in the United States Court House, at Chicago, Illinois, or in his absence before any other Judge who may be hearing this matter, at which hearing the Court will determine whether or not it shall make permanent the

possession of the temporary trustee appointed herein or appoint a new trustee or trustees or terminate the possession of said temporary trustee; and for such other matters as may come before the Court.

Granada Apartments, Inc.,
an Illinois Corporation,
Debtor.

Mort D. & Frank Goldberg,
Attorneys for Debtor,
11 S. La Salle Street,
Chicago, Illinois.

Entered May 20, 1937.

47 And afterwards, to wit, on the 20th day of May, A. D. 1937, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

48 In the District Court of the United States.

(Caption—65811)

May 20, 1937.

Present: Hon. John P. Barnes, Judge.

This day comes Weightstill Woods, Temporary Trustee, and presents his bond in the penal sum of $20,000.00, which bond is approved and signed by the Court and Ordered by the Court to be filed by the Clerk of this Court.

49 And on, to wit, the 24th day of May, 1937, came the Protective Committee by its attorneys and filed in the Clerk's office of said Court its certain Intervening Petition in words and figures following, to wit:

50 IN THE DISTRICT COURT OF THE UNITED STATES. Filed May 24, 1937.

* * (Caption—65811) * *

INTERVENING PETITION.

To the Honorable John P. Barnes, Judge of said Court:

Your petitioners respectfully represent unto the Court as follows:

1. That your petitioners, Charles S. Tuttle, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, constitute the Protective Committee created under a certain Deposit Agreement dated April 26, 1933, with respect to the First Mortgage 6% Real Estate Gold Bonds secured by trust deed dated September 1, 1928, from Granda Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, which trust deed covers the premises located at 525 Arlington Place, Chicago, Illinois, a copy of said Deposit Agreement being hereto attached and marked "Exhibit A."

2. That the Committee heretofore called for deposit under the terms of said Deposit Agreement the said First Mortgage 6% Real Estate Gold Bonds secured by said trust deed, and of the aggregate principal amount of $511,500 of said bonds now outstanding there has been deposited with the said Committee an aggregate principal amount of $328,100 of said bonds under and pursuant to the terms and provisions of said Deposit Agreement, which said bonds so deposited are in excess of 25% in principal amount of all of such bonds which are outstanding and unpaid and are in excess of 10% in amount of all claims against the Debtor.

51 3. That your petitioners as such Committee deem it advisable and for the best interests of all parties involved in these proceedings that your petitioners as such Committee be permitted to intervene in these proceedings and become a party thereto.

4. That your petitioners as such Committee have formulated a Plan of Reorganization of Debtor.

Wherefore, your petitioners as such Committee pray that an order be entered permitting them in their capacity as such Committee to interevene in these proceedings and to become a party in these proceedings for all proper purposes, and that Defrees, Buckingham, Jones & Hoffman, of Chicago, Illinois, counsel for the Committee in

this behalf, may receive notice of all motions and proceedings herein and that leave be given to the Committee to file, instanter, its Plan of Reorganization of Debtor; and that an order be entered to provide for the time and manner of filing objections to the said Plan of Reorganization; to provide for the classification of creditors and stockholders of Debtor; to provide for the time and manner within which claims and interests against Debtor or its property may be filed; to provide for the time and manner in which objections to such claims and interests may be filed; to fix a date for a hearing for the confirmation of said Plan of Reorganization; to provide for proper notice thereof to creditors and stockolders of Debtor, and for such further orders as the Court may deem proper and necessary in the premises.

Charles S. Tuttle,
Albert J. Peterson,
Lewis W. Riddle,
William G. Sturm,
E. A. Kilmer,
Constituting the Protective Committee with respect to the First Mortgage 6% Real Estate Gold Bonds as aforesaid,
By Vincent O'Brien,
Their duly authorized Agent.

Defrees, Buckingham, Jones & Hoffman,
Attorneys for said Petitioners.

52 State of Illinois, } ss.
County of Cook, }

Vincent O'Brien, being first duly sworn, on oath deposes and says that he is the duly authorized agent in this behalf of the petitioners above named; that he has read the above and foregoing petition by him subscribed on behalf of said petitioners, and knows the contents thereof, and that the same is true in substance and in ~~fact~~.

Vincent O'Brien.

Subscribed and sworn to before me this 28 day of May, A. D. 1937.

Kirsten Sorensen,
Notary Public.

(Seal)

53 EXHIBIT A.

The Granada
(Chicago, Illinois)
(Depositary's No. 15294)
First Mortgage Bondholders' Committee

Deposit Agreement
Dated April 25, 1933

Committee:
Charles S. Tuttle, Chairman
Edward S. Cark
Lewis W. Riddle
William G. Sturm

Howard E. Green
Secretary
208 South La Salle Street
Chicago

Marley Halvorsen
Assistant Secretary
105 South La Salle Street
Chicago

Central Republic Trust Company
Chicago
Depositary

54 This Agreement, dated April 25, 1933, by and between C. S. Tuttle, Edward S. Clark, Lewis W. Riddle and W. G. Sturm (hereinafter called the "Committee"), Parties of the First part, and such holders of The Granada (Unsubordinated) First Mortgage Six Per Cent Real Estate Gold Bonds dated September 1, 1928, and of the interest coupons appertaining thereto, hereinafter more particularly described, as shall become parties to this Agreement as hereinafter provided, Parties of the Second Part (hereinafter called the "Depositors");
Witnesseth that:

Whereas, Grnada Hotel Corporation, an Illinois corporation, executed and delivered its First Mortgage Six Per Cent Real Estate Gold Bonds dated September 1, 1928, in the aggregate principal amount of $525,000, and for the

purpose, among other things, of securing the payment of the principal of and interest on said bonds said Granada Hotel Corporation (which, together with its successors to the title to the property conveyed and mortgaged by the Trust Deed herein described and the persons who executed the aforesaid bonds, are hereinafter sometimes referred to collectively as "Obligor"), executed and delivered to Chicago Trust Company, as Trustee (which said Trustee and its successors in trust under the Trust Deed herein described, are hereinafter sometimes referred to as "Trustee"), a certain Trust Deed dated September 1, 1928, conveying, mortgaging and pledging to said Trustee, and to its successors in trust, certain property therein described which is commonly known as The Granada, located at 525 Arlington Place, Chicago, Illinois; and

Whereas, by a certain supplemental indenture bearing even date with said Trust Deed certain of said bonds numbered M141 to M165, both inclusive, in the aggregate principal amount of Twenty-five Thousand Dollars ($25,000.00) maturing September 1, 1935, were subordinated to all other bonds of this issue as to the lien of said Trust Deed as security for the payment thereof; and

Whereas, the term "Bonds" as hereinafter used in this Agreement is to be deemed to refer only to bonds of this issue other than said subordinated bonds numbered M141 to M165, both inclusive, and the term "coupons" is to be deemed to refer only to interest coupons pertaining to bonds of this issue other than said subordinated bonds numbered M141 to M165; and

Whereas, said Trust Deed and said supplemental indenture bearing even date therewith and any and all instruments confirmatory thereof and/or supplemental thereto are hereinafter sometimes referred to collectively as "Trust Indenture," and all property, conveyed, mortgaged and pledged by said Trust Indenture, is hereinafter sometimes referred to as "Trust Property"); and

Whereas, default has been made or threatened in the due observance or performance of certain of the covenants and provisions in said Trust Indenture contained; and

Whereas, united action and co-operation on the part of the holders of the unsubordinated bonds of the Obligor are advisable and necessary in order that their rights and interests may be protected, and such united action and co-operation can best be procured through a Committee, as in this Agreement provided; and

Whereas, the Committee has consented to represent and to act for the Depositors as hereinafter set forth;

Now, Therefore, In consideration of the premises and of the mutual advantages that will arise herefrom, all Depositors, each for himself, but not for the others, or any of them, agree with each other and with the Committee and with the Depositary hereinafter appointed, as follows:

Article I.

Deposit of Bonds and Issuance of Certificates of Deposit.

Section 1. Central Republic Trust Company, a corporation organized and existing under and by virtue of the laws of Illinois and having its principal office in the City of Chicago in the State of Illinois, is hereby appointed the Depositary under and according to the terms of this Agreement.

The Depositary may, upon the written request of the Committee, appoint a Sub-Depositary or Sub-Depositaries to accept deposits of Bonds and to issue Certificates of Deposit on behalf of such Depositary or to issue its or their own receipts pending issuance of Certificates of Deposit by the Depositary, and to assist in the performance of any acts herein provided to be performed by the Depositary or requested by the Committee pursuant hereto. The deposit of any Bonds with any such Sub-Depositary shall, for all purposes, be deemed to constitute and shall constitute deposit thereof hereunder. The form of any Certificates of Deposit to be issued by any such Sub-Depositary may be modified by the Committee to the extent which may be required for execution by such Sub-Depositary. References in this Agreement to the Depositary wherever appropriate, and particularly in all provisions relating to immunities, exemptions, freedom from liability, compensation and expenses, shall be deemed to include all Sub-Depositaries except when the context otherwise expressly indicates. Any Sub-Depositary shall in all respects follow the instructions of the Committee and the Depositary and shall transmit to the Depositary at reasonable intervals, or upon request of the Committee or the Depositary, all Bonds and/or coupons which may have been deposited with it, together with such information as the Committee and/or the Depositary may require in connection therewith, and upon so doing such Sub-Depositary shall be released and discharged from any and all obligation or liability with

respect to such Bonds and/or coupons so transmitted by it to, and received by, the Depositary.

Section 2. This Agreement shall be signed by the Parties of the First Part and two executed copies thereof shall be filed with the Depositary at its said principal office. The holder of any Bonds may deposit the same, together with the interest coupons appertaining thereto, in negotiable form, with the Depositary at its principal office and shall receive from such Depositary a transferable Certificate of Deposit signed in the corporate name of such Depositary by its authorized officer and substantially in the following form, with such appropriate insertions, variations and omissions as may from time to time be authorized, approved or adopted by the Committee:

Trust No. 15294
Principal Amount

C. D. No..... Deposited $.....

The Granada
(Chicago, Illinois)

(Unsubordinated) First Mortgage Six Per Cent Real Estate Gold Bonds

Dated September 1, 1928
Executed by Granada Hotel Corporation

Certificate of Deposit

Central Republic Trust Company hereby certifies that ..... or a predecessor in interest, has deposited with it as Depositary under a certain Deposit Agreement dated April 25, 1933, by and between the Committee named therein and such holders of the above mentioned unsubordinated bonds as shall become parties thereto as provided therein, unsuorbinated bonds of the aforesaid issue, of the aggregate principal amount of.....Dollars together with interest coupons appertaining thereto, as follows:

Number	Principal Amount	Maturity Date	With interest coupons of date specified below and following
.....	.....	.....	.....
.....	.....	.....	.....

A copy of said Deposit Agreement is on file at the office of the Depositary and may be inspected by any holder during regular business hours. Reference is hereby made to said Deposit Agreement for complete statements of the several rights, duties, obligations and exemptions of the Committee constituted thereby, of the Depositary thereunder and of the holder of this Certificate of Deposit, and also for a more complete description of the Trust Indenture securing the instruments deposited hereunder. Said Deposit Agreement is hereby made a part hereof with the same force and effect as if herein set out in full, and all the terms, conditions and provisions thereof are accepted and assented to by the holder of this Certificate of Deposit by his acceptance hereof.

Except as otherwise provided by said Deposit Agreement, the interest represented by this Certificate of Deposit is transferable only upon the books of the Depositary by the holder hereof in person or by attorney upon surrender of this Certificate properly endorsed. The Committee and the Depositary, or any Sub-Depositary, may treat the registered holder hereof, or, when presented duly endorsed in blank, the bearer hereof, as the absolute owner hereof for all purposes and shall not be affected by any notice to the contrary.

The holder hereof must give the Depositary written notice of any changes in his post office address, adequately describing this Certificate. The Committee and the Depositary are authorized to mail notices, securities and payments to such holder at his address as shown by the records of the Depositary. Any payment may be made to the registered holder hereof either in person or by mailing check for same, without requiring production of this Certificate for endorsement of such payment thereon and any payment so made shall be conclusive in favor of the Committee and the Depositary as against the registered holder hereof and any other parties having rights or interests in this Certificate.

This Certificate is not valid until signed by the Depositary.

Dated.....

Central Republic Trust Company,
Depositary,

By.....
Authorized Officer.

56 (Form for Back of Certificate)

For Value Received, the undersigned hereby sells, assigns and transfers unto.....
the within Certificate and all the property and rights represented thereby, subject to all the terms and conditions contained in the Deposit Agreement referred to in said Certificate, and hereby irrevocably constitutes and appoints ..... attorney to transfer the same on the books of the Depositary constituted by said Deposit Agreement, with full power of substitution.

Witness the hand seal of the undersigned this..... day of ....., 193....

.....(Seal)

Authenticity of signature guaranteed by:

.....

Notice: The signature to this assignment must correspond with the name as written upon the face of the Certificate of Deposit in every particular without alteration or enlargement or any change whatever and Such Signature Must Be guaranteed by a Bank or Trust Company Satisfactory to the Depositary or Sub-Depositary.

Pending the preparation of definitive Certificates of Deposit, temporary Certificates of Deposit in lieu thereof may be issued in such form as the Committee may approve. Said Certificates of Deposit (including both definitive and temporary, and any Certificates issued by any Sub-Depositary as herein provided) are sometimes herein called "Certificates."

The Depositary shall, on the Committee's written direction (which may be given or withheld, either generally or in special instances, in the discretion of the Committee), accept:

(a) Bonds which are not accompanied by any or some of the coupons appertaining thereto; and/or

(b) Interest coupons of any maturity appertaining to any of said Bonds apart from the Bonds to which such coupons appertain;

and shall issue to the Depositor thereof a Certificate which may be typewritten but which shall be generally in the form of that hereinbefore set out, or in such form as the Committee may approve, modified, however, to show

the Bonds and/or particular coupons actually deposited and received.

All deposited Bonds and/or coupons shall be received by the Depositary on behalf of the Committee and shall be held subject to the sole control, direction and disposition of the Committee under the terms and provisions of this Agreement; and each holder of such Bonds and/or coupons shall, upon so depositing the same, become a party to and be bound by all the terms and provisions of this Agreement, in the same manner and with the same effect as if he had personally signed this Agreement.

Section 3. Certificates shall be registered on records kept by the Depositary for that purpose. No transfer (other than by operation of law) of any Certificate shall be valid unless made on said records by authorization of the registered holder thereof in the manner provided herein and in said Certificate. Such transfer shall be recorded on the records of the Depositary and, upon surrender of the Certificate to be transferred, properly endorsed for transfer, a new Certificate therefor shall be issued to the transferee. Any person presenting evidence satisfactory to the Depositary that he has become entitled to any Certificate in consequence of the death, bankruptcy or insolvency of the registered holder of such Certificate, or otherwise by operation of law, shall be recorded on the records of the Depositary as the holder of such Certificate and receive a new Certificate upon the surrender to the Depositary of the outstanding Certificate. The person in whose name any Certificate shall be issued, or any transferee who shall become the registered holder of such Certificate, shall be entitled to all the benefits and shall be subject to all the obligations of a Depositor hereunder, in the same manner and with the same effect as though such person or transferee had originally deposited the Bonds and/or coupons represented by such Certificate and with like effect as if this Agreement had been signed by him in person. The terms "Depositor" and "Depositors," whenever herein used, shall include not only the original Depositor or Depositors, but as well the registered holder or holders at any time of any Certificate issued hereunder.

The Committee, the Depositary and/or any Sub-Depositary may treat the registered holder, for the time being, of each Certificate, or, when presented duly endorsed in blank by such registered holder, the bearer thereof, as the absolute owner thereof and of all the rights

and interests of the original Depositor of the Bonds and/or coupons in respect of which the same was issued, and neither the Depositary nor any Sub-Depositary nor the Committee shall be bound or be affected by any notice to the contrary or of any trust, whether ex-
57 press, or implied or constructive, or of any charge or equity respecting the title or ownership of such Certificate or of the Bonds and/or coupons covered thereby. The Committee, the Depositary or any Sub-Depositary may at any time make any payments to the owners of Certificates either by paying the same to the persons then registered as holders of such Certificates or by mailing checks therefor to such persons at their addresses as shown by the record of the Depositary. Any such payments may be made without requiring production of Certificates for endorsement of such payments thereon and any such payments shall be conclusive in favor of the Committee and the Depositary as against all holders, owners or other parties having rights or interests in such Certificates.

Upon surrender of a Certificate or Certificates properly endorsed for transfer and at the request of the registered holder or owner therof, the Depositary shall execute and deliver another Certificate or Certificates in exchange therefore representing in the aggregate a number of Bonds and/or coupons equal to the total number of Bonds and/or coupons represented by the Certificate or Certificates surrendered. All transfers, consolidations or split-ups of Certificates shall be made under such reasonable regulations as the Depositary may determine and upon payment of a sum sufficient to cover all charges and expenses of the Depositary and the Committee in connection therewith. If a Certificate shall be lost, stolen, mutilated or destroyed the Depositary may in its discretion issue a duplicate Certificate upon receiving evidence of such fact, satisfactory to it, and receipt of indemnity satisfactory to the Depositary, and surrender of the existing Certificate, if mutilated. Upon issuance of a new Certificate because of loss, theft, mutilation or destruction of any Certificate, the holder thereof shall pay to the Depositary any expenses involved in such service and shall further pay such fee as the Depositary shall deem reasonable.

Section 4. The Committee in its discretion may fix or may limit the period or periods within which holders may deposit their Bonds and/or coupons and within which they may become parties to this Agreement, and may from time

to time cause the books of Depositary for the registration or transfer of Certificates to be closed for such period or periods as Committee may see fit, and, in its discretion, either generally or in special instances, may at any time either before or after the expiration of any such period, alter, extend or renew the period or periods so fixed or limited for such other or further periods and upon such terms and conditions as it may determine. Holders of Bonds and/or coupons not so deposited within such period or periods will not be entitled to deposit the same, or to become parties to this Agreement, or to share in the benefits hereof, and shall acquire no rights hereunder, except upon obtaining the express consent of the Committee. At any time and upon such terms as it may deem proper from time to time, the Committee may direct that the Depositary accept from any Depositor the surrender of any Certificates issued hereunder, and, upon receipt thereof and in exchange therefor, surrender and deliver to the Depositor, or upon his order, the securities covered thereby or anything then held by the Depositary and/or the Committee in lieu thereof in accordance with the interest of such Depositor therein as determined by the Committee.

Section 5: Any Depositary or Sub-Depositary, upon being directed so to do by the Committee, may accept for deposit hereunder (but upon such terms and conditions, if any, as the Committee may determine) any certificates or receipts or documents evidencing ownership of, or interests in, or rights in respect of any of the Bonds hereinabove described and/or interest coupons appertaining thereto by whomsoever such certificates, receipts or documents may have been issued and shall issue therefor Certificates in such form as the Committee may prescribe. The Committee and the Depositary and any Sub-Depositary shall have and exercise all and every the same rights and powers in respect of such certificates, receipts or documents so deposited hereunder are are conferred upon and may be exercised by them in respect of Bonds and/or interest coupons deposited hereunder, and may take such action to procure possession of the Bonds and/or interest coupons covered thereby and as to the disposition thereof hereunder as the Committee shall deem advisable. The Committee shall have all such title to and all such powers with respect to all such certificates, receipts and/or other documents so deposited hereunder and with respect to the Bonds and/or coupons represented thereby and any interest in such Bonds and/or coupons and their proceeds as

are herein conferred upon it with respect to any Bonds and/or coupons deposited hereunder.

Section 6. The Depositary and/or any Sub-Depositary is authorized and directed to transfer, deliver and dispose of any and all Bonds, coupons and other instruments deposited hereunder, in accordance with the written order or orders from time to time of the Committee certified to such Depositary or Sub-Depositary in the manner
58 provided by Section 3 of Article VIII hereof. The Depositary and any Sub-Depositary shall, at all times, be free from all liability and responsibility in dealing with or disposing of Bonds, coupons and other instruments deposited hereunder as directed by the Committee.

Article II.

Personnel and Duties of the Committee.

Section 1. Parties of the First Part are hereby constituted and appointed the Committee hereunder. By unanimous vote of all members of the Committee, as the same may at any time be constituted, the membership of the Committee may be increased or decreased to such number as the Committee may desire. In the case of increase in the number of members, the additional members shall be appointed by vote or action of a majority of the then members of the Committee. Any member of the Committee, or the Chairman as such, may be removed at any time by the vote of all the other members, and any member of the Committee or the Chairman as such may resign by giving notice of his resignation to the Secretary of the Committee and to the Depositary. In case of the death, resignation or removal or of the refusal or inability to act of any member of the Committee, the vacancy thus created may at any time be filled by vote or action of a majority of its remaining members. Pending the filling of any such vacancy the remaining or surviving members shall constitute the Committee. The Committee may settle any account or transaction with any removed or resigning member or with the estate of any deceased member and may give full release and discharge upon such resignation, removal or death. The Committee as at any time constituted, and disregarding any vacancy, shall enjoy all the rights, powers, interests and immunities of the Committee as originally constituted and the word "Committee" as used herein

shall always be deemed to refer to the Committee as from time to time constituted.

The first Chairman of the Committee shall be the member designated in Article XI hereof who shall be and continue to act as such until he shall resign from the Committee or from the Chairmanship thereof, or until he shall die or be removed from the office as herein provided. Any successor Chairman shall be appointed by the Committee from the members thereof. The Secretary or the Chairman of the Committee shall file written notice with the Depositary and with any Sub-Depositary of any changes in the membership of the committee or in the offices of Chairman or Secretary thereof, and such filing shall be deemed to constitute notice of such changes to all parties hereto.

In so far as appropriate to that purpose, the title to any property held by the Committee shall (subject to the power of the majority of the Committee to make disposition thereof) be in the nature of a joint tenancy, and not a tenancy in common, with survivorship among members of the Committee upon the death, resignation or removal of any of them. If requested by the Committee, however, any former member, or in case of his death his executors, shall execute instruments releasing to the Committee all his right, title and interest in the property held hereunder.

Section 2. The Committee may hold its meetings at such times and places and upon such notice as it may at any time determine. Unless otherwise by resolution of the Committee, the Chairman, the Secretary or any two members of the Committee may at any time or times call a meeting of the Committee, such notice to be given thereof as the person or persons calling the same may, in his or their uncontrolled discretion, deem to be reasonable. The Committee shall keep and maintain a record of its proceedings and actions in such form as it shall determine. Except where in this Agreement it is expressly stated that powers of, or actions by, the Committee shall be exercised or taken by a greater proportion or number of members thereof, the Committee may exercise any of the powers or take any action under this Agreement with the assent of a majority of the Committee, which assent may be expressed at a meeting of the Committee by vote or by resolution of a majority of the members of the Committee, or without a meeting by an instrument or separate concurrent instruments in writing signed by a majority of the members of the Committee. The Committee may adopt its own rules

of procedure respecting the taking of Committee action, and, as respects any order given or action taken by the Committee, neither the Depositary, any Sub-Depositary, Depositors nor third persons need inquire as to whether such rules were observed, or as to whether the minority of the Committee were notified or apprised of any meeting or of the passing or contemplated passing of any order or the taking or contemplated taking of any action by the Committee. Any member of the Committee may vote or act by proxy, attorney or agent (which proxy, attorney or agent may, but need not, be another
59 member of the Committee and may be appointed in writing or by telegraph, radio or cable) and the vote or act of such proxy, attorney or agent shall be as effective as the vote or act of the member appointing the same. The Committe may select, hire, employ and dismiss, in and about the exercise of any of its powers, a secretary and an assistant secretary or assistant secretaries (who may, but need not, be members of the Committee) and such other officers, counsel, engineers, accountants, appraisers, superintendents, laborers, agents and employees as it may see fit, and in such manner and at such times as it may deem advisable.

Section 3. The Committee is authorized and empowered to construe this Agreement, and its construction made in good faith shall be conclusive and binding upon all of the parties hereto. The Committee may remedy defects and supply omissions in this Agreement and may make such modifications as in its judgment may be deemed necessary or proper for the purposes hereof, and its judgment as to the expediency or necessity for any such action shall be conclusive and binding upon all parties hereto. The Committee shall also have power (whenever in its judgment it may be advisable, and from time to time) to amend this Agreement, and an executed copy of all amendments shall be filed with the Depositary and with all Sub-Depositaries. If in the judgment of the Committee, which shall be conclusive and binding upon all the parties hereto, any such amendment does not alter the rights of the Depositors to their substantial detriment, it shall when so filed become binding upon all parties hereto without further notice. If in the judgment of the Committee any such amendment affects the rights of the Depositors to their substantial detriment, such amendment shall not be effective unless and until approved by a meeting of Depositors held in the manner prescribed by Article V hereof; provided, how-

ever, that in lieu of approval at such a meeting the Committee may cause notice of such filing and a brief statement of the nature of such amendments to be mailed to the registered holders of Certificates in a manner similar to that provided in Article IV of this Agreement (but subject to the provisions of Section 4 of Article X hereof) in which latter case any such holder may within (20) days after the mailing of such notice file written notice of dissent and withdraw from this Agreement in the manner and upon conditions similar to those specified in Article IV of this Agreement but in the absence of such filing of dissent and withdrawal such holder shall be conclusively presumed to have assented to such amendment and shall be bound thereby.

Section 4. The Committee shall serve without compensation, but shall be entitled to be reimbursed for all disbursements, expenses and liabilities (including counsel fees) made or incurred by it or by its agents on its behalf in exercising any powers and performing any duties hereby vested in the Committee. The Committee (and/or the Depositary) shall be entitled to hold and to resort to the deposited Bonds and/or coupons and any funds or property which it may purchase, acquire or receive and which may come into its hands, for its expenses, including the compensation and expenses of the Depositary and any Sub-Depositary, and of such attorney, engineers, accountants, appraisers, superintendents, laborers, agents and employees as the Committee and/or the Depositary may employ, and any and all disbursements made or indebtedness or liabilities incurred by the Committee and/or Depositary hereunder. Holders of Certificates shall not be personally liable for such expenses, or for such indebtedness or liabilities, and there shall be no personal liability on the part of such holders for any action taken or expenses incurred by the Committee, but the Committee shall look soley to the security of the deposited Bonds and/or coupons and property subject hereto for the payment of such expenses, indebtedness and/or liabilities.

Section 5. The Committee as a committee, the members thereof as individuals, any firm or corporation with which any of the members of the Committee shall be associated, the Depositary, or any successor Depositary, or any Sub-Depositary, or any of their agents or officers, either separately or with each other, may deposit Bonds and/or coupons under this Agreement, and shall have the same rights and be subject to the same liabilities in respect thereof as

other Depositors and any or all such persons and corporations may be or become pecuniarily interested (as owners, pledgees, purchasers, sellers, underwriters, or otherwise) in the property, securities or matters referred to in or connected with this Agreement or with any plan and/or agreement of reorganization or readjustment which the Committee and/or the Depositors may adopt or approve as herein provided, or otherwise, or in any property, securities or matters in or with which the Obligor may be directly or indirectly interested or concerned, and in this regard the Committee as a committee, the members thereof as individuals, any firm or corporation with which any of the members of the Committee shall be associated, and the Depositary, or any Sub-Depositary, or any of their officers and agents, shall be as free to act as if this agreement had not been entered into.

Any member of the Committee may be or become an officer, director, stockholder, agent, or employee of any corporation, trust or association organized or created pursuant to the provisions of this Agreement; and the Depositary or any Sub-Depositary or any member of the Committee may be appointed or act as trustee under any mortgage, indenture or agreement created or entered into in connection with any plan of reorganization or readjustment adopted pursuant to the provisions of this Agreement or otherwise, and may act as transfer agent, registrar or in other capacity in connection with any securities issued pursuant to the provisions of any plan or agreement or reorganization or readjustment so adopted.

The Committee shall have and it hereby is given the right to co-operate with such other committees as are or may hereafter be organized to represent other interests connected with or pertaining to the Trust Property or the Obligor, and the Committee shall have the right to act (by its Chairman or by any member of the Committee or other representative or representatives appointed by it) in conjunction with any such other committees. The members of the Committee or any of them may become members of or may constitute any such other committee.

Article III.

Powers of the Committee.

Section 1. The Depositors, severally and respectively, do hereby assign, transfer and convey to the Committee, its successors and assigns, the full, legal, equitable and

beneficial title to all Bonds, coupons and other instruments deposited hereunder for all and singular the purposes hereof, and severally and respectively agree that the Committee shall be and it is hereby vested with every right, power and authority of whatsoever character, nature or purpose, in order to enable the Committee to carry out and perform all and singular the purposes and intent of this Agreement. The title to all deposited Bonds, coupons and other instruments shall vest in the Committee immediately upon the deposit thereof with the Depositary or any Sub-Depositary, and the Depositors respectively agree at any time and from time to time, on demand of the Committee, to execute any and all other transfers, assignments, authorizations and approvals requested by the Committee for confirming, vesting or otherwise evidencing the ownership of said Bonds, coupons or other instruments in the Committee or for making effective any act, agreement or undertaking of the Committee in respect thereof. The Committee shall have and may exercise, in its discretion, all the rights and powers of the respective owners or holders of Bonds, coupons and other instruments deposited hereunder; and without in any manner limiting the other provisions hereof and the powers and authorities vested in the Committee through the assignment, transfer and conveyance to it of the deposited Bonds, coupons or other instruments, it is further agreed by the Depositors that the Committee shall be fully authorized, in its discretion:

(a) To transfer the deposited Bonds, coupons and other instruments, or cause the same to be transferred, into the name of the Committee or its nominee(s), and to attend either in person or by proxy all meetings of bondholders or creditors of the Obligor, and as the holders and owners of said Bonds, coupons and other instruments to vote upon all questions which may arise at such meetings, and also as such holders and owners to consent, dissent or request either in writing or otherwise in respect to any and all matters;

(b) To consent or agree to or to make any changes, modifications, alterations or amendments in any or all of the terms, covenants or provisions of Trust Indenture and/or of Bonds and/or coupons appertaining thereto as may to the Committee seem advisable, and to execute and/or assent to the execution of all instruments convenient or necessary thereto; and to consent to and/or to extend the time of payment of any of said Bonds and/or coupons for such period or periods as the Committee may deem advisable;

(c) To exercise, assert and enforce by legal proceedings or otherwise, in its uncontrolled discretion, any powers vested in or conferred upon the owners and holders of the deposited Bonds and/or coupons by the terms thereof or under the terms of Trust Indenture or otherwise, and in general to do such acts and enter into such contracts and agreements as the Committee in its uncontrolled discretion may deem judicious or proper in order fully and effectively to carry out the purposes of this Agreement; to elect to have the principal of the Bonds declared due and payable forthwith or otherwise and to request any trustee or trustees under Trust Indenture so to do, and to withdraw any such election; to declare said Bonds due and to withdraw any such declaration; to waive and release any payment of principal or interest; to waive or suspend any default in the Bonds or coupons or in sinking fund requirements or under any provisions of Trust Indenture or of any other bonds, notes, securities or claims at any time held hereunder; to ratify any action heretofore or hereafter taken by any trustee under trust Inden-
61 ture; to pay or consent to the payment in whole or in part of deposited Bonds and/or coupons and/or of any claims against Obligor whether or not such claims are secured by a lien prior to said Bonds and/or coupons; and to make such requests upon or give such directions to any trustee or trustees under Trust Indenture as are expressly or impliedly provided for therein;

(d) To repair or improve the Trust Property or to cause any repairs, improvements, alterations or additions to be made thereto; to purchase, lease or otherwise acquire any machinery, equipment, fixtures, tools, materials, supplies, facilities, rights or property of any kind or nature to be used in or about the Trust Property; to enter upon and to take possession of the Trust Property or any part thereof, either with or without the acquiescence of the owner thereof or of the holders of any prior or subsequent liens thereon and to lease all or any part thereof upon such terms and for such periods as the Committee, in its absolute discretion, may determine, and/or to operate and use the same, and for the purposes of said operation to employ and discharge and direct all managers, operators, agents, laborers, and employees, and/or to make all contracts or agreements, whether in respect of the purchase of supplies, material or equipment, or otherwise, as the Committee shall deem best for such operation; to take such possession and/or engage in such operation as the agent of any trus-

tee or trustees under Trust Indenture; to request any such trustee or trustees to take such possession and/or engage in such operation and to exercise all other power and authority granted in Trust Indenture; to institute, prosecute any such trustee or trustees to institute, prosecute or defend, or to intervene in or become party to, any suit or proceeding for the foreclosure of Trust Indenture or otherwise, and to exercise all other powers and pursue all other remedies provided in Trust Indenture and/or provided by the laws of Illinois or of any other State where Trust Property is located; among other things to institute proceedings for strict foreclosure, or request or direct any such trustee or trustees so to do, and to that end, for and on behalf of each and all of the Depositors, to waive a deficiency decree and to state in any Bill of Complaint, Petition or other pleading that the Depositors are willing to take and accept any property conveyed, mortgaged and pledged by Trust Indenture in full satisfaction of the indebtedness secured by Trust Indenture or to authorize any such trustee or trustees so to do; and to apply for and procure, or direct any such trustee or trustees to apply for and procure the appointment of a receiver or receivers for all or any part of the Trust Property and/or any other property or the dismissal of any such receiver or receivers, or the substitution of any such receiver or receivers or to consent to any such action; to consent to the issuance of receivers' certificates relating to all or any part of Trust Property and/or to any other property held by or on behalf of the Obligor or the Committee upon such terms and conditions and having such liens as the Committee may deem necessary or advisable, and to oppose the issuance of such receivers' certificates; to remove or take part in the removal or concur in the resignation of any trustee or trustees or any other persons or corporations acting under any provisions of Trust Indenture and to appoint or take part in appointing any successor to any such trustee, person, or corporation; and/or to accept any certificate of sale, or other instrument of title for, or a conveyance of, all or any part of the Trust Property or any other property or of any right or interest therein, as full or partial satisfaction of all or of any part of the indebtedness secured by Trust Indenture, and/or in connection with any such transaction, to give or grant to anyone an option to purchase any such property or any right or interest therein on such terms and conditions and at such times as the Committee may determine;

(e) To institute or cause to be taken or instituted or to intervene in or become a party to or exercise control over such suits, actions, defenses or proceedings, at law, in equity or otherwise, and to give such directions, execute such papers and do such acts, whether under or for or in connection with the foreclosure of Trust Indenture, or otherwise, as the Committee shall deem judicious or proper in order to protect the security provided by Trust Indenture, or to procure the payment of the deposited Bonds and/or coupons, with interest thereon, or any indebtedness secured by Trust Indenture, or to enforce the observance or performance of any covenants, warranties, agreements or conditions contained in said Bonds and/or coupons and/or Trust Indenture or otherwise; to deposit or cause the Depositary or any Sub-Depositary to deposit any or all of said Bonds and/or coupons as exhibits or evidence in any suit, actions or proceedings as required by law, or the ruling of any court, master in chancery or commissioner, or other officer of any court; and to represent, bind and act for the Depositors in any and all such matters as fully and completely as the Depositors themselves might do;

(f) To institute or cause to be taken or instituted or to intervene in or become a party to suits or actions or proceedings enforcing or attempting to enforce any guaranty or guaranties of the payment of the principal of and/or interest on said Bonds and/or any other indebtedness secured by said Trust Indenture and/or of the observance or performance of any covenants, warranties, agreements or conditions contained in said Bonds and/or Trust Indenture or otherwise;

(g) To consent and agree to the sale of all or any part of the Trust Property or of any property of Obligor (without regard to whether such sale may or may not be pursuant to judicial or legal proceedings) by the Obligor, by and trustee or trustees, or by any receivers of the Obligor, free and clear from the lien of Trust Indenture or of any other lien, or subject to any lien or liens, at such price or prices and upon such terms and conditions as the Committee in its discretion may see fit, and to consent to the release by any trustee or trustees under Trust Indenture of any or all of the property covered by Trust Indenture from all or any part of the lien securing deposited Bonds and coupons, for such consideration as the Committee may fix and with or without compliance with the provisions, if any, of Trust Indenture as to the release by any trustee or trustees of property covered thereby;

62

(h) To apply from time to time any and all moneys in the hands of the Committee in the following manner: First, to the discharge or payment of any advances for and costs and expenses of any judicial, legal or other proceedings, and costs, expenses, advances, liabilities, compensation, and/or fees of any receivers of any property subject to the lien of Trust Indenture, and of any trustee or trustees, under Trust Indenture and of their counsel; the furnishing of indemnity to any trustee or trustees; the payment and/or purchase of receiver's certificates; the acquisition of securities or property and payment of the costs and expenses of operating, rehabilitating and/or improving such property and the Trust Property; and the payment of all indebtedness, obligations, liabilities and expenses of the Committee and/or the Depositary, and of their counsel, and for the compensation of the Depositary and of counsel for the Committee and the Depositary, and for any other purposes specified or permitted under the provisions of this Agreement; and Second, at such time or times as the Committee in its uncontrolled discretion may deem prudent, to distribute any balance of such moneys not needed for the above purposes, to and among the holders of Certificates of Deposit ratably and in proportion to the amount of principal and interest then due on Bonds and coupons described in their respective Certificates without preference or priority of one such Bond or coupon over any other or of interest over principal or of principal over interest, provided, however, that the Committee may in its discretion at any time and from time to time alter or vary the order of payment or distribution aforesaid for any reason which in the opinion of the Committee may make such variance advisable.

(i) To consent or agree to the making of any notation or memorandum on the Bonds and/or coupons deposited hereunder, evidencing any partial payment thereon or any release of property from the lien of Trust Indenture, or any other thing done or consented to by the Committee, or any agreement made in regard to such partial payment, release or other thing as to the Committee may seem proper; and in the event of receiving interest on any of the deposited Bonds the Committee is authorized to surrender the coupons representing such interest, and in connection therewith to execute and deliver in the names of the Depositors or otherwise, any Ownership Certificates or other instruments and to do any and all further acts

that may be necessary or desirable in order to comply with any Federal or State laws or regulations concerning income or other taxes, or in lieu of executing such Ownership Certificates or other documents to waive performance by the Obligor of any obligation or duty to pay or to reimburse bondholders for any income taxes on such interest so paid;

(j) To do or cause to be done whatever (including the execution and delivery of proper instruments) the Committee in its sole discretion may deem expedient, necessary or proper to preserve, protect, guard, secure, promote or enforce the rights and interests of the Depositors; to pay, discharge, purchase and/or compromise in whole or in part the principal, interest or penalties on all or any part of any obligations (including taxes and assessments) now or hereafter deemed by the Committee to constitute liens on the Trust Property or on any other property owned by the Obligor or owned or held by or for the Committee, or on any part thereof; to consent to the issuance of new securities secured by a lien having priority to the lien of the Trust Indenture or to that of the deposited Bonds on all or any part of any such property in such amount or amounts as the Committee may deem necessary or desirable for the purpose of funding or paying any indebtedness, including taxes and assessments, which the Committee may deem to be owing for or to constitute a lien on any such properties and also sufficient to provide for the payment of all or any part of the expenses in connection with the issuance of such new securities; to make any stipulation or agreement in respect of the priority, parity or subordination of any mechanic's lien or other lien or claim of lien against any such property or of any bonds or obligations secured or claimed to be secured by lien on any such property whether or not the same be deposited with the Committee, and to distribute or permit the distribution of money or property to the holders of any such liens, claims or bonds in accordance with such stipulation or agreement, whether or not such distribution accords with the distribution which would have been made except for such stipulation or agreement; to enter into and perform any contracts or agreements with the holders of any such liens, claims or obligations and/or to liquidate, compromise, settle or discharge any such lien or liens and/or taxes and assessments, either by conveyance of any securities or property then held by the Committee to any person, firm

or corporation or taxing authority or otherwise, or to permit any such property to revert to such taxing authority or lienholder; to make any agreement, settlement or adjustment with any holder of Bonds and/or coupons not depositing the same under this Agreement for the purpose of securing his consent to any action or nonaction contemplated by the Committee or the deposit of the Bonds
63 and/or coupons of such holder under this Agreement; and to agree to permit any such holder or any Depositor to withdraw from this Agreement at such time and on such terms and conditions as the Committee may see fit.

(k) To demand, collect and receipt for all amounts that may be due or owing upon or in respect of deposited Bonds and/or coupons whether for principal or for interest, or otherwise; to compromise, release or settle any or all claims or rights of Depositors hereunder; and to take or institute or cause to be taken or instituted all such suits, actions or proceedings, whether legal, equitable, in bankruptcy or otherwise, for the recovery of any property or the amount due upon any Bonds and/or coupons or other obligations held or owned by the Committee; and to assent to any composition in bankruptcy or otherwise offered by or on behalf of the Obligor or any person having any interest in the Trust Property or any other property acquired or sought to be acquired by the Committee; and to enforce payment of the deposited Bonds and/or coupons by proving the same in bankruptcy or otherwise;

(l) To do whatever in the judgment of the Committee may be deemed expedient to promote or procure the sale, lease, exchange and/or purchase of all or any part of the property described in Trust Indenture or of any property of the Obligor without regard to whether such property is or is not covered by the lien of Trust Indenture and without regard to whether such sale, lease, exchange and/or purchase is or is not pursuant to judicial proceedings and/or foreclosure or otherwise; if the Obligator be a corporation, to purchase or otherwise; acquire all or any part of its capital stock; to cause any such corporation to dissolve, or to be dissolved, and to purchase all or any part of its property at receiver's sale or other sale incident to said dissolution or winding up of the affairs of such corporation; at any time to purchase or cause to be purchased in its behalf or for its account or otherwise to acquire any property described in Trust Indenture or belonging to the Obligor or any part of any such property, at such prices

and on such terms as the Committee may deem expedient; to acquire the same by foreclosure, or otherwise, and in connection therewith to waive any deficiency judgment, and to purchase, or provide for the purchase of, or acquire, or provide for the acquisition of, any such property or any other property or any interest therein or certificate of sale therefor or decree of foreclosure thereon, or any lien thereon or obligations secured by lien thereon or any other property, or thing of use in the judgment of the Committee in promoting the interests of the Depositors; to manage, control, rent, mortgage, or otherwise deal with all or any part of any property purchased or otherwise acquired by or for the Committee under the powers conferred upon the Committee by any of the terms of this Agreement, as it may deem for the best interests and protection of the Depositors; and to sell or otherwise dispose of, on such terms and conditions as the Committee may deem prudent, any securities or property at any time held by or for the Committee hereunder which the Committee deems it inadvisable to retain;

(m) To negotiate and contract with any persons, firms, and corporations for obtaining or for granting powers, rights or facilities, exchanges of property, or any other right which may be deemed necessary or desirable to obtain or grant, and to make contracts therefor, and generally to make and ratify such purchases, contracts, stipulations or arrangements as in its opinion will operate directly or indirectly to aid in the preservation, improvement, development, or protection of the property subject to said Trust Indenture or of any property which the Committee shall acquire or shall have contracted to acquire;

(n) To purchase any obligations or securities at such price or prices as it may deem advisable; to sell or exchange the deposited Bonds and/or coupons for securities or obligations of the Obligor or of any corporation, person, trust, firm or association, which securities or obligations shall bear such date, mature on such date or dates, bear such rate or rates of interest or dividends (if any), and contain such terms, provisions and conditions as the Committee in its uncontrolled discretion may deem judicious or proper, and which securities or obligations may be secured or unsecured, all on such terms as the Committee in its uncontrolled discretion may deem judicious or proper, it being understood that unless the context otherwise indicates the word "securities" as used in this Agreement is intended to include bonds, notes, obligations, debentures, participation

certificates, voting trust certificates, shares of corporate stock, and all other like or unlike evidences of interest or indebtedness;

(o) To give or provide such indemnity and protection to any title company as may be required by such company in connection with the issuance of any guaranty or certificate of title or policy of title insurance covering all or any of Trust Property or other property acquired by the Committee, and generally to furnish indemnity to such persons as the Committee may deem advisable, and to pay any premimum or charge for the issuance of any title guaranty or certificate of title or policy of title insurance or other indemnity policy or policies that the Committee may acquire or cause to be issued or acquired; to give or provide such indemnity and protection to any trustee or trustees under Trust Indenture as the Committee may approve against any liability by reason of any action or thing which any such trustee or trustees may take or do at the request of the Committee; and to pay any expenses or disbursements of any such trustee or trustees or of the Committee or of the Depositary, and any compensation or fees of any such trustee or trustees or the Depositary, and for the purposes aforesaid to pledge, mortgage, or sell any or all of the
64 deposited Bonds and/or coupons and any and all securities, bonds and/or coupons or property acquired by or on behalf of the Committee;

(p) To distribute in whole or in part, any interest received in respect of coupons held hereunder pro rata to and among Depositors holding Certificates covering coupons so paid and/or at any time to borrow moneys or otherwise acquire funds and distribute such sums or any part thereof or any other funds then held by the Committee, to and among the holders of Certificates of Deposit issued hereunder including (without limiting the generality hereof) the distribution of sums approximating the interest that would have been payable on any deposited coupons had there been no default thereon, and/or distributions in anticipation of the consummation of any plan or agreement of reorganization or readjustment which the Committee has approved or may expect to approve;

(q) To borrow any sum or sums of money from any persons, firms or corporations whatsoever (including the Depositary or any Sub-Depositary or any of the members of the Committee individually, or the firms or corporations of which they or any of them may be members, officers, directors or stockholders), at any time or times and for any

purpose or purposes which the Committee in its uncontrolled discretion deems to be expressly or impliedly authorized by any of the provisions of this Agreement whatsoever (including the payment of any expenses, obligations and liabilities of the Committee); and for the moneys so borrowed the Committee may give promissory notes or other obligations for the payment of money, binding the deposited Bonds and/or coupons and/or Trust Property and/or other securities or property held by the Depositary or the Committee hereunder, but no such note or notes shall be deemed to constitute or shall create any personal liability on the part of the Committee or its members, the Depositary or any Sub-Depositary or any Depositor hereunder; and, as security for the payment of any moneys so borrowed and for the performance of the provisions of any such promissory notes and/or of any other obligations so given, to charge, by pledge, mortgage and/or otherwise, the deposited Bonds and coupons, or any of them, and the Trust Property or any other securities or property purchased, acquired or held by the Committee or any part thereof, and any person, firm or corporation from whom the Committee shall borrow money, as hereinabove provided, may rely conclusively upon the certificate of the Committee or of the Chairman or Secretary of the Committee as to the purposes for which any such moneys are borrowed and that such purposes are within the powers granted to the Committee, and no such person, firm, or corporation shall be required to see to the application of the moneys so borrowed, or any part thereof; to direct the Depositary or any Sub-Depositary to hold the deposited Bonds and coupons and other securities or property, or any designated part thereof, as security for the repayment of any moneys borrowed or to be borrowed by the Committee as hereinabove provided, in which case such Bonds and coupons and other property so designated shall be, and shall be held by such Depositary or Sub-Depositary as, security for such loans with the same effect as if they were actually deposited with the person or corporation making such loans as security for the payment thereof;

(r) To apply any or all of the deposited Bonds and coupons and any other rights, securities or property at any time in the possession or control of the Committee to the whole or partial performance of any contract entered into by the Committee or to the payment of any obligations or liabilities which it may have incurred in the exercise of any powers expressly or impliedly conferred upon it by the pro-

visions of this Agreement, or to mortgage or pledge all or any part of such securities or property or to exchange the same, or to sell the same at public or private sale and with or without notice, for any consideration that the Committee may approve, and to apply such of the proceeds of such sale, mortgage or pledge as may be required to the payment or performance of any such contracts or other obligations or liabilities including the expenses of the Committee and the Depositary;

(s) To do any and all things which it may deem necessary, proper or expedient to procure a satisfactory readjustment or reorganization of the obligations constituting or secured by liens on the Trust Property; to prepare any plan or agreement for any such reorganization or readjustment and to amend the same or to join in any such plan or agreement prepared by others and to submit any such plan or agreement or amended plan or agreement to the Depositors hereunder; to do all things deemed necessary or advisable to secure the approval and the complete consummation of any such plan or agreement; to cause to be organized any corporation, trust, association, firm or entity that the Committee may deem advisable for the purposes of any such plan or agreement; and upon the approval of any such plan or agreement in the manner herein provided, to do all acts and things required or permitted thereby or thereunder; and

(t) To rescind, alter, modify, enlarge or restrict any contract or agreement entered into, or withdraw any consent given or election made, or dismiss or cause to be dismissed any action or proceeding commenced or caused to be commenced by the Committee under any of the provisions hereof.

Section 2. No power or authority in this Agreement or in any article, section or sub-section thereof conferred upon or granted to the Committee or the Depositary is intended to be exclusive of any other power or authority (whether or not granted in the same article, section or sub-section) but each and every such power and authority shall be cumulative and shall be in addition to every other power or authority given in this Agreement. No power or authority in this Agreement granted shall be exhausted or impaired by the exercise thereof, but may be exercised again from time to time as occasion arises. Any power or authority in this Agreement granted may in point of time be exercised without regard to the order in which the statement of such power or authority may occur in this

Agreement. Particularly may all powers or authorities granted in this Agreement be exercised before or after any sale or purchase of any or all of the Trust Property or any property of the Obligor or other person or corporation, or the acquisition thereof on foreclosure or otherwise and before or after or irrespective of the adoption or approval of any plan or agreement of reorganization or readjustment, and the exercise of any of said powers or authorities shall not be deemed to constitute a plan of reorganization or readjustment which needs to be submitted to the Depositors. It is the intention to confer upon the Committee all powers which it may deem necessary or expedient in or towards the furtherance of the general purposes of this Agreement, although such powers be of a character not contemplated at the time of the execution hereof.

In respect of any power granted herein the Committee shall be deemed to have all supplemental powers necessary or incidental to full and proper exercise of the granted powers. Without in any manner limiting such supplemental powers, the Committee shall have the power to make investigations, inspections, and inquiries; to employ counsel, experts, and advisers; to make reports to Depositors; to sign, execute and deliver letters, documents, telegrams, notices, requests, covenants, deeds, grants, assignments, indentures, mortgages, deeds of trust, bonds, notes, securities, pledges, powers of sale, leases, releases, and other like or unlike documents; to sue or defend in courts, whether at law or in equity, or bankruptcy or of claims, or before committees, councils, or commissions or any other governmental agency or agencies; and to do all other things which the Committee regards as permitting the more convenient, speedy or satisfactory exercise of any or all of the powers granted herein. The Committee shall be under no obligation to use or exercise any power or authority which it may have, such powers and authorities being given to the Committee for use by it only when, from time to time, the Committee deems it advisable to use the same.

Section 3. All moneys expended or obligations incurred by the Committee under this Article III shall be deemed expenses for which the Committee shall be entitled to reimbursement and lien as provided in Section 4 of Article II of this Agreement.

Section 4. In the event that the Committee in the exercise of any of the powers conferred upon it either by this Agreement or under any plan or agreement of reor-

ganization or readjustment shall purchase or otherwise acquire any property or any lien thereon or interest therein or certificate of sale, or certificate of purchase, or commissioner's deed, sheriff's deed, or other instrument of title therefor, title thereto being taken either in the name of a member or members of the Committee or of its nominee or nominees or any trustee or trustees or otherwise, then and in every such case, the rights and interests of the Depositors therein shall be only in the proceeds, rents, issues and avails of such property and shall not be or constitute an interest legal or equitable in the real estate or property, and such rights and interests of the Depositors shall at all times and for all purposes be deemed to be personal property and shall be dealt with accordingly and upon the death of any owner or holder thereof such rights and interests shall pass to his or her personal representatives or assigns and not to his or her heirs at law.

In the event title shall be so taken in the name of a nominee or nominees of, or in the trustee or trustees selected by, the Committee then and in every such case, unless otherwise expressly provided, neither the Committee nor any individual member thereof shall be deemed to have any interest, legal or equitable, in the real estate or property, but the rights and interests of the Committee therein shall be deemed to be a power of direction only with respect to the conveyance by such nominee or nominees, trustee or trustees of the title to the property and the disposition of the proceeds, rents, issues and avails thereof.

Article IV.

Plan of Reorganization or Readjustment.

Section 1. The Committee shall have power, either before or after any sale of the Trust Property or acquisition thereof by any trustee or trustees under Trust Indenture, or by the Committee on foreclosure or
66 otherwise, to make, enter into, or become a party to (either alone or in conjunction with other bondholders, creditors, stockholders, or committees representing them, or otherwise) any plan and/or agreement of reorganization or readjustment of any or all property, securities and/or affairs of the Obligor, containing such terms and conditions as the Committee may, in its sole discre-

tion, deem proper or advisable, or the Committee may approve and adopt any such plan or agreement though not prepared by it. Such plan or agreement may constitute managers of the reorganization or readjustment under it and provide for their compensation and expenses, and the Committee or any members thereof may act as such managers or may be members of any committee constituted by such plan or agreement.

Such plan or agreement of reorganization or readjustment may be effected (but need not be) by a merger or consolidation of the Obligor with any corporation or corporations, trust or trusts, or may be effected by a sale and/or the transfer of all or any part of the Trust Property or other property of the Obligor to any person or persons, corporation or corporations, trust or trusts, or by an exchange of the deposited Bonds and/or coupons for other bonds, obligations, securities and/or stocks or may be effected in any like or unlike manner which the Committee may determine or approve.

Upon the approval and/or adoption of any such plan and/or agreement of reorganization or readjustment by the Committee, a copy thereof shall be filed with the Depositary and with any Sub-Depositary and thereupon a brief notice of the fact of such adoption and filing and a summary of such plan or agreement shall be prepared and shall be mailed in an envelope with postage prepaid to each of the Depositors, addressed to them in accordance with the provisions of Section 4 of Article X hereof. The affidavit of the Secretary of the Committee that such notices and summary have been mailed and of the date of such mailings shall be deemed to be and shall be sufficient and conclusive evidence of the facts and things therein stated and all Depositors shall be concluded thereby. Within twenty (20) days after the mailing of such a notice, any Depositor may file with the Depositary a notice, in writing, that such Depositor dissents from such plan or agreement, and may withdraw from deposit Bonds and/or coupons in the aggregate principal amount covered by the Certificate of Deposit held by him and/or anything then held by the Depositary and/or the Committee as proceeds thereof or in lieu thereof, in accordance with the interest of such Depositor therein as determined by the Committee. but only upon surrender of his Certificate properly endorsed in blank and upon payment of such amounts as the Committee, in its absolute discretion, may fix as his pro rata share of the

disbursements, expenses and liabilities (including counsel fees) made or incurred by the Committee and of the compensation and expenses of the Depositary and Sub-Depositaries. The exercise of such right of withdrawal shall release and discharge the Committee and the Depositary and their officers, agents and attorneys from any and all liability at law or in equity, in tort or in contract, known or unknown, fixed or contingent, or of any nature or character whatsoever, as to each such withdrawing Depositor. Such plan or agreement shall be binding upon all Depositors who shall not have filed dissent and made such withdrawal within the period and in the manner above provided, their heirs, legal representatives, successors and assigns, all of whom shall be conclusively deemed to have assented thereto, whether they shall have received actual notice thereof or not, and shall be irrevocably bound and concluded by the same.

The Committee is hereby authorized and empowered (whether before or after the adoption or submission of any plan or agreement) to adopt, approve or accept any amendment to or modification of any plan or agreement so formulated, adopted, accepted or approved, or supplement thereto, or to adopt, approve or accept a new plan or agreement in lieu thereof. Copies of such amendment, modification or supplement thereto or of any such new plan or agreement shall be filed, notice thereof shall be given and modifications thereof may be effected and withdraws made, all in the same manner and with the same effect as herein provided with reference to the original plan or agreement; provided, however, that if in the opinion of the Committee, which shall be conclusive and binding upon the Depositors, such amendment, modification or supplement does not affect the rights of the Depositors hereunder to their substantial detriment, no notice of the adoption, approval or acceptance thereof shall be necessary, and upon the filing with the Depositary of copies of such modification, amendment or supplement and of the approval thereof by the Committee, the same shall become binding upon all the Depositors.

The Committee is hereby fully authorized and empowered in its sole and absolute discretion, at such times as it may deem expedient, to declare any such plan or agreement or modified plan or agreement operative and to carry out any such plan or agreement or modified plan or agreement on behalf of all the Depositors who shall

67 not have dissented within the period and in the manner hereinbefore specified. Notwithstanding that the Committee has approved and adopted any plan and/or agreement or modified plan and/or agreement or reorganization or readjustment, and has submitted the same to the Depositors, and the said Depositors shall have been conclusively deemed to have assented thereto as herein provided, the Committee may, nevertheless, without submission to the Depositors of the question of abandonment of such plan and/or agreement, or modified plan and/or agreement, abandon such plan or agreement, or any modified plan or agreement, and terminate the same. In case the Committee shall finally abandon a plan or agreement or a modified plan or agreement which may have been adopted, and shall not desire then or thereafter to substitute any other plan or agreement therefor, the Bonds and coupons deposited or held hereunder, or their proceeds, substitutes or avails then under the control of the Committee, shall be delivered to the several Depositors or their transferees in amounts representing their respective interests as determined by the Committee, but only upon surrender of their respective Certificates of Deposit properly endorsed in blank, and upon the payment of their proper proportionate shares of such disbursements, expenses and liabilities, if any, as shall have been paid or incurred by the Committee together with a pro rata share of the compensation and expenses of the Depositary, and any Sub-Depositaries, and the Committee, shall have full and absolute power to determine and to apportion the share of such disbursements, expenses and liabilities to be borne by each Depositor.

Section 2. The title of any securities, property or moneys acquired and/or to be acquired by the Committee prior to, upon, or subsequent to the consummation of any such plan or agreement of reorganization or readjustment as aforesaid, may, in the discretion of the Committee, be vested in a corporation to be organized by the Committee, or may be vested in a trustee or trustees (who may, but need not, be a member or members of the Committee), or the title to such securities, property or moneys may be held in such other manner as the Committee may determine and the Committee may in its discretion cause such corporation or trust to assume liability for or to pay any expenses and obligations of the Committee. The Committee, in its discretion, may at

any time distribute any moneys it may then hold, together with any obligations, securities, stock, and/or certificates of beneficial interest of any such corporation, trust and/or trustee or trustees then held by it, to the Depositors ratably and in proportion to their several and respective interests as determined by the Committee, or the Committee may, in its discretion, hold the said securities, property or moneys and at such time or times as it may deem advisable sell the same or any part or parts thereof for cash or upon credit or convert the said property or securities, or any part thereof, into money or obligations for the payment of money, and distribute the same or the proceeds thereof, and the moneys, if any, theretofore held, to the Depositors ratably and in proportion to their respective interests determined as aforesaid. Before any such distribution, the expenses and obligations of the Committee together with the compensation and expenses of the Depositary and any Sub-Depositaries shall be paid or provided for. After any such distribution of all assets held by or for it, the Committee shall be relieved from all liability hereunder. The accounts kept and the distribution made by the Committee shall be final as to calculation and amount.

As long as the Committee shall hold any property or securities, the Committee may manage, control, vote upon or otherwise deal with the same in such manner as it may deem advisable and may enter into agreements providing for the voting of any stock held by the Committee, or may distribute voting trust certificates to the Depositors in lieu of any such stock.

In the event that the Committee shall cause title to any property to be vested in any trust for the benefit of itself or of the Depositors, under which the trustee or other officer or agent is required to issue certificates representing shares of beneficial interest therein, the agreement or declaration establishing such trust shall be in such form and shall contain such provisions, terms, stipulations and conditions and shall confer such powers on the trustees, officers and committees of such trust, as the Committee may deem proper or advisable. It is expressly provided, however, that any agreement or declaration establishing any such trust as aforesaid shall contain stipulations satisfactory to the Committee to the effect that the rights and interests of the holders of its certificates for shares of beneficial interest, shall be only in the proceeds, rents, issues and avails of the trust property

and shall not be, or constitute an interest legal or equitable in any real estate held by such trust and that the rights and interests of such holders therein shall at all times and for all purposes be deemed to be personal property. In the event that the Committee should cause certificates of beneficial interest in any such trust to be distributed to Depositors hereunder without the adoption of any plan or agreement of reorganization or
68 readjustment, the agreement or declaration establishing such trust shall also provide that neither the trustee nor any of its officers or committees shall thereafter sell all or substantially all of the assets of the trust to third parties unless and until notice of the intention to make such sale shall have been mailed to the registered holders of its certificates for shares of beneficial interest, and shall further provide that such sale shall not be made if the holders of certificates representing one-third of all shares of beneficial interest then outstanding shall advise the trustee of said trust in writing within twenty (20) days after the date of the mailing of such notice that they object to the making of such sale. Such limitations on the authority of any such trustees, officers and committees, as aforesaid, need not apply, however, to any mortgage or pledge of such properties or securities or to any sale or transfer of such properties to a corporation whose shares are to be distributed in whole or in part in exchange for such shares of beneficial interest.

In the event that the Committee shall elect to distribute certificates for shares of stock in a corporation, or certificates for shares of beneficial interest in a trust, or notes, bonds or other securities issued by any such corporation or trust to the Depositors, the Committee may in its discretion cause any interests of a Depositor in a fraction of any share or security to be adjusted out of any cash that it may have on hand or may cause warrants for fractional interests in any such securities to be issued to Depositors. Such warrants shall not represent any beneficial interest in such shares or securities until consolidated with other warrants aggregating one whole share or interest and provision may also be made that such warrants shall be void if not so consolidated with other warrants within such time as the Committee may determine.

Anything herein to the contrary notwithstanding, in the event that any property acquired or held by the Committ-

tee, or held by a trustee or trustees under any trust established by the Committee, shall not be sold within six months before the expiration of the period during which said property may lawfully be held by or for such Committee or in such Trust, the Committee is hereby authorized and any such trust may be authorized to cause all such properties to be sold at any time within such final six months of such lawful period without requiring notice to or the consent of any Depositor or holder of certificates or shares of beneficial interest, and to distribute the proceeds and avails thereof to and among the persons then entitled thereto.

The Committee may exercise any of the powers or authorities conferred upon it by this Section 2 of Article IV of this Agreement without submitting its action to the Depositors for their approval or dissent.

Article V.

Meetings of Depositors.

Any matter or question not herein provided for, or any matter or question suggested by the Committee, or any amendment of the terms or provisions of this Agreement, may in the sole discretion of the Committee be submitted to the Depositors at a meeting to be held at any place within the State of Illinois, and called by telegram delivered for sending at a telegraph office in Chicago, Illinois, at least seventy-two (72) hours before the time of said meeting, or by letter mailed with postage prepaid, at least ten (10) days before the day of such meeting, such letter or telegram being addressed to each Depositor at his address as shown by the records of the Depositary, subject, however, to the provisions of Section 4 of Article X hereof, or by both telegram and mail. Any such meeting may be called only by or at the direction of the Committee. A quorum for the transaction of business at any such meeting of Depositors shall consist of Depositors holding Certificates representing a majority in principal amount of the Bonds deposited hereunder, but less than a quorum may adjourn such meeting from time to time without notice other than announcement at the meeting until such time as a quorum shall be present. Depositors may be represented at such meeting either in person or by proxy, which proxy may, but need not, be the Committee or any member or members thereof. The

records of the Depositary shall constitute the sole and exclusive evidence as to the holders of Certificates and the amount of Bonds and matured coupons covered thereby. The procedure at any such meeting shall be determined by the Committee except as herein otherwise provided.

Any matter, question or amendment approved or adopted by the holders (or proxies) of Certificates for a majority of the Bonds represented at any such meeting at which a quorum is present shall be binding and conclusive upon all parties hereto, provided, however, that no amendment to this Agreement shall change or alter the powers, rights, duties, obligations or liabilities of the Depositary or of the Committee without their respective consents thereto in writing.

69

Article VI.

Records of the Committee.

The Committee shall keep books showing its receipts and disbursements and a record of its proceedings, and upon the termination of its duties a final account of its expenses and disbursements shall be filed with the Depositary, and thereupon the Committee, and each member thereof, shall be discharged from all its or his duties, liabilities or obligations as to all Depositors hereunder. The Committee shall not be required to make any report or accounting other than said final account.

Article VII.

Termination of Agreement.

The Committee may, at any time (whether before or after the adoption or submission of any plan or agreement), terminate this Agreement whenever it shall deem it advisable so to do by giving notice of such termination to each of the Depositors by letter, mailed, with postage prepaid, at least ten days before such termination, addressed to each Depositor in the manner provided by, and subject to the provisions of, Section 4 of Article X hereof; and this Agreement shall be terminated whenever the termination thereof shall be requested in writing or writings filed with the Depositary by Depositors holding Certificates representing eighty per cent (80%) in principal

amount of the Bonds deposited hereunder, but only on such terms as shall satisfy all obligations of the Committee. The termination of this Agreement shall not affect any provisions, assents, acts, agreements or proceedings, whether of a legal nature or otherwise, that the Committee has made, done or instituted, prior to such termination. In the event of such termination of this Agreement, the Depositors, upon the payment of the disbursements, expenses and liabilities (including counsel fees) made or incurred by the Committee, together with the compensation and expenses of the Depositary and any Sub-Depositaries, and upon the surrender to the Depositary of their Certificates endorsed in blank, shall be entitled to their pro rata share as determined by the Committee of all property, securities and cash held subject hereto.

Article VIII.

Liability of Committee and Depositary.

Section 1. Neither the Depositary nor any Sub-Depositary nor the Committee nor any of its members shall be answerable or liable for the acts or omissions of any officer, employee, agent or attorney appointed and selected with reasonable care, nor be under any obligation or liability not affirmatively expressed in this Agreement nor shall any member of the Committee or the Depositary or any Sub-Depositary be responsible to anyone for the acts or omissions of any other nor be responsible or liable to any one for any matter or thing relating to this Agreement except for his or its own actual bad faith in the discharge of duties or the exercise of powers hereunder.

Section 2. The Committee and each member thereof and the Depositary and each Sub-Depositary shall always be protected and free from all liability in acting upon any bond, coupon, notice, request, consent, receipt, certificate, guaranty, affidavit, telegram or other like or unlike paper or document or signature believed by it or by any member of the Committee or by the Depositary or Sub-Depositary, or any of them, as the case may be, to be genuine and to have been signed or sent by the proper party or parties, or by the party or parties purporting to have signed or sent the same.

Section 3. Neither the Committee nor any member of the Committee shall be personally liable for any act or

omission of the Depositary or any Sub-Depositary. Neither the Depositary nor any Sub-Depositary shall be liable for any act or omission of the Committee or any member thereof, and the opinion, decision, order, direction or approval of the Committee with reference to any and all business, matters and things acted upon by the Committee, expressed in writing by a majority thereof or certified to the Depositary or any Sub-Depositary by the Chairman or the Secretary of the Committee to have been issued, made or adopted by the Committee, shall be a complete justification to the Depositary or any Sub-Depositary for any action taken by such Depositary pursuant thereto or if so certified to any other person, firm or corporation may be relied upon by such person, firm or corporation in dealing with the Committee or in acting with respect to any matter affected by this Agreement. The Committee shall not be liable for any mistake of fact or law, whether as to the validity or priority of any claim, lien, or title in, to, or against the Trust Property or any other property that it may acquire or deal with hereunder or in any other matter whatsoever. The Committee and the Depositary may act in full reliance upon any statements or opinions of any title company, attorney at law, accountant, statistician, employee, and any other person believed by it or them to be competent in the matter upon which they are consulted, and for anything done or suffered in good faith based on such advice or information, neither the Committee, nor the Depositary shall be liable to anyone.

Section 4. Neither the Committee nor the Depositary shall be responsible for the financial condition of any person, corporation or trust whose securities shall be accepted in exchange for any property or securities held by or for the Committee hereunder.

No statement, explanation or suggestion contained in this Agreement or in any plan adopted hereunder, or in any notice, telegram, letter or circular or advertisement issued, delivered or published by the Depositary or any Sub-Depositary or by the Committee, is intended or is to be accepted as a representation or warranty or as a condition of deposit or assent under this Agreement or any agreement amendatory hereof or supplemental hereto. No defect or error shall release any deposit under this Agreement or affect or release any assent hereto except by the written consent of the Committee.

Section 5. The Committee and the Depositary, their officers, agents and attorneys, shall be released from all liability and accountability of every kind, character or description whatsoever by the acceptance by the holders of a majority in amount of outstanding Certificates of any property, securities, money or benefits distributed by the Committee and the surrender of their Certificates, except that the Committee shall continue obligated to make delivery of a like pro rata amount as determined by the Committee of property, securities, money or benefits to the other holders of Certificates upon the surrender of such Certificates; and the acceptance of such property, securities, money or benefits hereunder by any Depositor shall conclusively and finally estop him, and such acceptance by a majority in amount of the Depositors shall conclusively and finally estop all the Depositors from asserting or claiming that the action of the Committee in the distribution and delivery of such property, securities, money or benefits fails in any particular to conform to any of the provisions of this Agreement, or any plan or agreement, or modified plan or agreement which may be adopted hereunder.

Section 6. The Depositary and any Sub-Depositary shall be entitled to compensation for its or their services, in an amount to be agreed upon with the Committee, and also to reimbursement for any and all expenses and disbursements including counsel fees, incurred by them in connection herewith.

Section 7. The Committee, or any member thereof, or its officers, agents and employees, shall not be personally liable for any debts contracted by them, or any of them, or upon any contract, agreement or other obligation entered into by them, or any of them, or for damages to persons or property incurred by them, or any of them, or for damages to persons or property of any kind whatsoever, or for salaries or non-fulfillment of contracts, and it is expressly agreed that any and all such liabilities or obligations shall constitute liabilities or obligations solely against the property held by the Committee.

Section 8. The Depositary and any Sub-Depositary shall not be liable for interest on any moneys received by them hereunder, and may keep any such moneys in their own custody or may deposit any such moneys with any bank or trust company having an aggregate capital and surplus of not less than $1,000,000. No requirements of

any rule of law or statute now or hereafter in force regarding the investment or segregation of trust or other funds shall apply to such moneys so held in custody by the Depositary or any Sub-Depositary, and the Depositary or any Sub-Depositary shall not be responsible for the solvency of any bank or trust company to which it may intrust such moneys in good faith.

Article IX.

Removal, Resignation or Merger of Depositaries.

Section 1. The Committee shall have the power to remove any Depositary, and the Depositary may resign as such by sending written notices by registered mail, addressed to the Chairman and to the Secretary of the Committee at their respective addresses last known to the Depositary. Any such resignation shall take effect upon the date specified in such notices, which date, however, shall not be less than ten days after the mailing thereof, unless the Committee shall waive such requirement and accept a shorter notice. In the event of the removal or resignation of any Depositary hereunder, a successor Depositary shall be appointed by written instrument (executed at least in duplicate) signed by a majority of the members of the Committee. Such successor Depositary shall be a trust company or a state or national bank situated in the City of Chicago, Illinois, having a paid-up capital of not less than $1,000,000, if there be such a trust company or bank willing and able to act as Depositary upon reasonable or customary terms, and, if not, then any bank or trust company approved by the Committee. Upon such appointment being lodged with such resigning or removed Depositary and with such successor Depositary, the said successor Depositary shall thereupon have all the powers of said resigning or removed Depositary, as if originally appointed Depositary hereunder. Upon payment to said resigning or removed Depositary of its compensation fees, costs, expenses and disbursements, it shall turn over to said successor Depositary, all records, bonds, coupons, moneys, securities, and property, remaining deposited hereunder, or held by it as Depositary hereunder, and thereupon such former Depositary shall be relieved of all liability hereunder, except for its own willful misconduct.

71

The Depositary may at any time remove or accept the

resignation of any Sub-Depositary, as such, upon such terms and conditions as the Depositary and the Committee may approve, and upon receiving the written consent of the Committee, the Depositary may appoint a successor to any such Sub-Depositary.

Section 2. Any company into which the Depositary or any Sub-Depositary may be merged or with which it may be consolidated, or any company resulting from any merger or consolidation to which the Depositary or any Sub-Depositary shall be a party, shall be the successor of such Depositary or Sub-Depositary without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein contained to the contrary notwithstanding, and such successor may execute any Certificates either in its own name or in the name of its predecessor. In case any Certificates provided for hereunder shall have been executed but not delivered, any such successor depositary or Sub-Depositary may adopt the execution of such Certificates by its predecessor and deliver the same to the Depositor or to any person entitled thereto.

Article X.

Notices to Depositors and Miscellaneous.

Section 1. Unless such meaning is inconsistent with the context thereof, the terms "Bond" or "Bonds," whenever used herein, shall be deemed to include all unpaid interest coupons appertaining thereto, whether matured or unmatured, and also any certificates of deposit, deposit receipts or other instruments representing such bonds and/or coupons or any interest therein that may be deposited hereunder in accordance with the provisions of Section 5 of Article I of this Agreement.

Section 2. The word "Secretary" shall be deemed to include any Assistant Secretary of the Committee.

Section 3. This Agreement shall be construed solely as an agreement among the parties hereto, and solely affecting and relating to the Committee, the Depositors, the Depositary and any Sub-Depositary, and neither the owners or holders of Bonds and/or coupons not deposited or subjected to the operation of this Agreement in accordance with the provisions hereof, nor any other person, firm or corporation, shall have any rights whatsoever hereunder. This Agreement shall bind and inure to the

benefit of the several parties hereto and each of them, and the heirs, executors, administrators and assigns of the Parties of the Second Part.

Section 4. The Committee, the Depositary or any Sub-Depositary, may assume for the purpose of giving notices to the Depositors, that the persons registered on the books of the Depositary or Sub-Depositaries, as the holders of outstanding Certificates, are the only true owners thereof. Upon or prior to receiving any Certificate of Deposit, the owner or holder thereof shall advise the Depositary or Sub-Depositary issuing such Certificate, in writing, of his correct post office address and shall subsequently notify the Depositary in writing of any change in such address. Every such notice of change of address shall clearly describe the issue of bonds represented by the Depositor's Certificate and shall give the "C. D. No." that appears in the upper left hand corner thereof. The mailing of any notices or other documents, postage prepaid, addressed to the holder of a Certificate at his address as shown on the records of the Depositary or Sub-Depositary, shall be deemed to be and shall be, a sufficient sending of such notice or other document to the holder or owner of such Certificate. Notwithstanding anything in this Agreement to the contrary, no notice need be given or mailed to any Depositor who fails to supply a correct post office address in the manner hereinbefore provided, and any Depositor who shall fail in such respect shall be conclusively deemed to have waived all obligation on the part of the Committee or of the Depositary to give him any notice herein provided for.

72 The affidavit of the Chairman or Secretary of the Committee that any notices and/or other documents have been mailed to Depositors and as to the dates when such mailings shall have been made, shall be deemed to be, and shall be sufficient and conclusive evidence of all facts and things therein stated and all Depositors shall be concluded thereby.

Certificates of Deposit, securities, stock certificates, bonds, notes, checks, and any other property which at any time may be issuable or distributable to a Depositor may be mailed to such Depositor at his address appearing on the books of the Depositary, but such mailing shall be at the risk of such Depositor.

Section 5. The Committee may as a condition precedent to any partial distribution require the presentation of Certificates for the notation thereon of such distribution,

but the Committee may make any distributions without making such notations.

Section 6. References in this Agreement to the Obligor, unless the context otherwise indicates, shall be deemed to include all successors to any of the property of the Obligor or to any interest therein and any receiver or receivers of the Obligor or any of its property and any corporation or corporations stock in which is owned or controlled by the Obligor. Any action which the Committee may take hereunder with respect to the Obligor or any of its property or securities, may be taken by the Committee with respect to any such successor or receiver. or any corporation in which stock is owned or controlled by the Obligor, or with respect to any property owned, possessed or controlled, or securities issued by, any successor, receiver or corporation.

Section 7. Any determination by the Committee as to the share or interest of any Depositor in any securities or property at any time held hereunder, or as to the amount of expenses, liabilities and disbursements apportionable to any Depositor for any of the purposes of this Agreement, shall be final and binding on all parties hereto.

Section 8. Any successor Depositary or Sub-Depositary and all successor and additional members of the Committee shall be entitled to the same rights, powers and immunities as their predecessors in office.

Section 9. Titles to Articles shall not be deemed to constitute any part of this Agreement.

Article XI.

Chairman and Secretary of the Committee.

C. S. Tuttle is hereby designated and selected as Chairman of the Committee, and Howard E. Green is hereby designated and selected as Secretary and Harley Halvorsen as Assistant Secretary of the Committee, and they shall respectively continue to act as such officers until their successors are appointed in the manner provided by Article II hereof.

Article XII.

Execution of Agreement.

Section 1. The members of the Committee by their signatures to this Agreement signify their consent to accept and exercise such powers and authorities (subject to the terms thereof) as may be conferred upon them by the terms and provisions of this Agreement. This Agreement may be executed by the members of the Committee in one or more counterparts, and all of such counterparts shall constitute the original Agreement. This Agreement shall take effect and be operative upon the Depositors hereunder, irrespective of the number of Bonds and/or coupons that may be deposited hereunder. Upon this Agreement being signed by any three members of the Committee in person or by duly authorized attorneys in fact, the Committee shall be deemed to be constituted and this Agreement shall become effective as to the members so signing.

In Witness Whereof, the members of the Committee, as Parties of the First Part, have hereunto set their hands and seals as of the day and year first above written, and the Depositors, as Parties of the Second Part, evidence
73 their assent hereto by their respective deposits hereunder of said Bonds, coupons and/or other instruments in the manner hereinbefore provided.

C. S. Tuttle (Seal)
Edward S. Clark (Seal)
Lewis W. Riddle (Seal)
W. G. Sturm (Seal)
Committee.

To evidence its acceptance of the duties of Depositary hereunder, Central Republic Trust Company has caused this Agreement to be signed in its corporate name by one of its Vice-Presidents, and its corporate seal to be affixed and attested by one of its Assistant Secretaries, all as of the day and year first above written.

Central Republic Trust Company,
By H. W. Hawkins,
Vice-President.

(Corporate Seal)
Attest:
W. T. Anderson,
Assistant Secretary.

74 And afterwards, to wit, on the 24th day of May, A. D. 1937, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit: Entered May 24, 1937.

75 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—65811)

ORDER.

This cause coming on to be heard upon the petition of Charles S. Tuttle, Albert J. Peterson, Louis W. Riddle, William G. Sturm and E. A. Kilmer, presently constituting the Protective Committee (hereinafter sometimes called the "Committee") under and pursuant to a certain Deposit Agreement dated April 25, 1933, with respect to the First Mortgage 6% Real Estate Gold Bonds (hereinafter sometimes referred to as "First Mortgage Bonds"), secured by Trust Deed dated December 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, as Trustee, conveying therein the property and assets of Debtor; and the Court having heard the arguments of counsel and being fully advised in the premises;

It Is Ordered:

1. That leave be and the same is hereby granted to the Committee to file herein its said Intervening Petition pertaining to these proceedings, and to become a party in these proceedings for all proper purposes, and that notice of all motions and hearings herein shall be served upon Defrees, Buckingham, Jones & Hoffman, 105 South La-Salle Street, Chicago, Illinois, counsel for the Committee;

76 2. That leave be and the same is hereby granted to the Committee to file herein instanter its Plan of Reorganization of Debtor, dated May 21, 1937;

3. That creditors and stockholders of the Debtor may file written objections to the said Plan of Reorganization with the Clerk of this Court on or before June 23rd, 1937, which objections shall set forth, among other things, the principal amount of the claim or the number of shares, as the case may be, held by the objector, and a copy of such

objections shall be served upon Defrees, Buckingham, Jones & Hoffman, 105 South LaSalle Street, Chicago, Illinois, counsel for the Committee, prior to the filing thereof;

4. That for the purposes of any Plan of Reorganization that may be presented in these proceedings, and its acceptance, the creditors and stockholders of the Debtor are divided into the following classes according to the nature of their respective claims and interests:

Class 1:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, entitled to priority under Section 77B of the Bankruptcy Act, as amended.

Class 2:

Claim of City National Bank and Trust Company of Chicago, as allowed in these proceedings, as Successor Trustee under the Trust Deed securing First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928, from Granada Hotel Corporation, a corporation, to Chicago Trust Company, as Trustee, for amounts due it for its own use and benefit, as established by decree of foreclosure of said Trust Deed entered December 18, 1936, in proceedings pending in the Superior Court of Cook County, Illinois, in Cause Numbered 519151.

77 Class 3:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, except with respect to said First Mortgage 6% Real Estate Gold Bonds comprised in Class 4 hereof.

Class 4:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a

corporation, as Trustee, except with respect to said First Mortgage 6% Real Estate Gold Bonds comprised in Class 4 hereof.

Class 4:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, with respect to Bonds numbered M-141 to M-165, both inclusive.

Class 5:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to Second Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee.

Class 6:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to Promissory Chattel Mortgage Note secured by Chattel Mortgage dated August 23, 1933.

Class 7:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to the shares of Preferred Stock of Granada Apartments, Inc.

78 Class 8:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to the Common Stock of Granada Apartments, Inc.

Class 9:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, of whatever character, other than as above in the foregoing Classes 1 to 9, inclusive, enumerated, whether the same be secured or unsecured or evidenced by written instrument.

It is not intended by the foregoing enumerated classes to indicate any preference or priority of any one class over any other class.

5. That claims relating to administrative costs and expenses in these proceedings, as provided in Section 77B of the Bankruptcy Act, as amended, be and hereby are excluded from the scope of this order, so far as the same relate to the time of filing or the manner of proving or evidencing such claims; and provision is to be made by further order of the Court for such filing and proving or evidencing and for the allowance thereof.

6. That all claims and interests against the Debtor or its property, as set forth in the foregoing Classes 1 to 9, inclusive, shall be evidenced by filing with Carl R. Chindbloom, hereby appointed as Special Master herein, for the purposes herein contained, at his office at 7 South Dearborn Street, Chicago, Illinois, on or before June 23rd, 1937, a verified proof of claim substantially in the form prescribed by Section 57 (a) of the Bankruptcy Act, as amended, having attached thereto where such claim or
79 interest is evidenced by a written instrument, the original instrument, except as otherwise hereinafter provided.

Further, within the time limit hereinabove set forth, the respective trustees under the respective trust deeds under which the said First Mortgage 6% Real Estate Gold Bonds and Second Mortgage 6% Real Estate Gold Bonds were issued are authorized to file a claim or claims in this cause with said Special Master herein on behalf of the holders of such respective bonds and coupons and interest pertaining thereto. Any claim so filed may be filed without attaching thereto either the original or copies of the respective bonds or interest coupons outstanding under or secured by said respective trust deeds, or without attaching said respective trust deeds or copy thereof. Each claim in respect of any said bond or interest coupon hereinafter filed in this cause by the owner or holder thereof, or by the duly authorized agent, shall, when such claim is proved and allowed, reduce pro tanto the said respective claims filed herein by the said respective successor trustees with respect thereto.

The Committee may file with the said Special Master, within the time limit hereinabove set forth, a claim or claims upon and in respect of bonds and interest coupons deposited under said Deposit Agreement, and in lieu of

filing with said claim or claims the bonds and interest coupons so on deposit, said Committee may file the certificate or certificates of the Depositary of said Committee, certifying the amount of bonds and interest coupons held under the aforesaid Deposit Agreement.

80 7. Upon receipt by the said Special Master of a verified proof of claim or interest, accompanied by the original of the bond, interest coupon, note, certificate of stock, or other written instrument, evidencing said claim or interest, in respect of which said claim or interest is filed, the Special Master shall cause such bond, interest coupon, note, stock certificate, or other written instrument, to be stamped with the following legend:

"Proof of claim representing this instrument has been filed with the undersigned, as Special Master appointed by the District Court of the United States for the Northern District of Illinois, Eastern Division, in cause therein pending entitled, 'In the Matter of Granada Apartments, Inc., a Corporation, Debtor, numbered 65811.'

Special Master."

and upon the stamping of said legend upon said bond, interest coupon, note, stock certificate, or other instrument, the same may be returned to the claimant, if the claimant shall so request, upon payment by such claimant to said Special Master of an amount sufficient to cover the registered mailing thereof, and upon the filing by such claimant of a photostatic copy of said bond, interest coupon, note, stock certificate, or other instrument. If no photostatic copy is filed, the original of said bond, interest coupon, note, stock certificate, or other written instrument, shall be retained by the Special Master until the date

81 herein fixed as the date on or before which objections to claims must be filed, or until such other date as the Court may fix as such date for the filing of objections to claims. After said date, the original of said bond, interest coupon, note, stock certificate, or other written instrument, may be returned to the claimant, if the claimant shall so request and shall pay to the Special Master an amount sufficient to cover the cost of the registered mailing thereof, without the filing by such claimant of a copy of said bond, interest coupon, note, stock certificate, or other written instrument.

8. No stock certificate or certificates shall be issued in exchange for or upon the transfer of any stock certificate stamped as aforesaid, without first presenting such new

certificate or certificates to the Special Master in order that a similar legend may be affixed by the Special Master to such new certificate or certificates.

9. All claims and interests, duly filed or evidenced within the time and in the manner hereinabove specified, shall be allowed by this Court in due course, without taking further proofs thereof, unless the Court shall otherwise determine or unless on or before July 3rd, 1937, or within such further time as the Court may allow, written objections to the allowance of any such claim or interest shall have been filed with the Special Master, in which event the claims or interests to which the objections shall have been filed shall be proved in accordance with law, provided that prior to the filing of such objections a copy thereof shall be served upon Defrees, Buckingham, Jones & Hoff-
82 man, 105 South LaSalle Street, Chicago, Illinois, counsel for the Committee.

10. The Special Master shall report to the Court as soon as may be after the date herein fixed for filing objections to claims, the names of all persons filing claims and interests, the class in which each such claim or interest belongs, and the amount of such claim or interest, noting any objections or objections which may have been filed to the allowance of any such claim or interest.

11. That a hearing is set for July 9th, 1937, at 10:00 o'clock A. M., before the Honorable John P. Barnes, or before such other Judge as may then be sitting in his place and stead, in the room usually occupied by him as a court room, in the United States Court House, Chicago, Illinois, for the following purposes:

(a) The consideration of and the allowance or disallowance of claims and interests filed in these proceedings;

(b) The consideration of and hearing on any objections filed in these proceedings to the determination made of the division of creditors and stockholders of the Debtor into classes;

(c) The proposal by the Committee and the consideration by the Court of the Plan of Reorganization filed herein by the Committee;

(d) The proposal and consideration of any other Plan of Reorganization which may properly be proposed in these proceedings;

(e) The consideration of any amendments or objections which may be properly presented in these proceedings to the Plan of Reorganization filed herein by the Committee,

or to any other Plan of Reorganization which may be so properly proposed in these proceedings;

83 (f) The confirmation of such Plan of Reorganization, subject to acceptance thereof by or on behalf of the persons required by Section 77B of the Bankruptcy Act, as amended, to accept a Plan of Reorganization as a prerequisite to a confirmation thereof by the Court;

(g) The entry of any and all orders deemed by the Court to be necessary and proper for the consummation and the carrying into effect of any Plan of Reorganization which may be confirmed by the Court, including the determination of the allowances to be made for fees and expenses;

(h) The determination of all other matters germane to these proceedings; and

12. That the creditors and stockholders whose claims have been allowed herein may, at any time up to the time of the confirmation of the said Plan of Reorganization, accept said Plan of Reorganization by filing or causing to be filed written acceptances thereof executed in person or by a duly authorized agent or attorney in the form substantially as hereinafter set forth with Carl R. Chindbloom, as Special Master, at his office at 7 South Dearborn Street, Chicago, Illinois;

13. That Weightstill Woods, Trustee heretofore appointed in these proceedings, be and he hereby is directed to cause to be sent by mail within fifteen (15) days after the entry of this order, to the creditors and stockholders of the Debtor and claimants against its property (except holders of claims falling within Classes 3 and 4, as above designated), as the same may appear upon the books and records of the Debtor, or as may be known, at their last known post office addresses, as the same may appear on the books and records of the Debtor, or as may be known, a copy of the following:

(a) A copy of the said Plan of Reorganization filed herein by the Committee;

(b) A copy of a notice, entitled in this cause, in substantially the following form, to-wit:

84 "IN THE DISTRICT COURT OF THE UNITED STATES
(Caption—65811)

NOTICE.

To All Creditors and Stockholders of Granada Apartments, Inc.:

Notice is hereby given that pursuant to order entered herein on May 24, 1937, this notice was directed to be given and the following, among other things, were determined, ordered, and directed:

1. That Charles S. Tuttle, Albert J. Peterson, Louis W. Riddle, William G. Sturm, and E. A. Kilmer, presently constituting the Protective Committee (hereinafter sometimes called "Committee"), acting under a certain Deposit Agreement dated April 25, 1933, were granted leave to submit a Plan of Reorganization of the Debtor formulated by the Committee to creditors and stockholders of the Debtor;

2. That for the purposes of any Plan of Reorganization that may be presented in these proceedings and its acceptance, the creditors and stockholders of the Debtor are divided into the following classes according to the nature of their respective claims and interests:

Class 1:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, entitled to priority under Section 77B of the Bankruptcy Act, as amended.

Class 2:

Claim of City National Bank and Trust Company of Chicago, as allowed in these proceedings, as Successor-Trustee under the Trust Deed securing First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928, from Granada Hotel Corporation, a corporation, to Chicago Trust Company, as trustee, for amounts due it for its own use and benefit, as established by decree of foreclosure of said Trust Deed entered December 18, 1936, in proceedings pending in the Superior Court of Cook County, Illinois, in Cause Numbered 519151.

85 Class 3:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, except with respect to said First Mortgage 6% Real Estate Gold Bonds comprised in Class 4 hereof.

Class 4:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, with respect to Bonds numbered M-141 to M-165, both inclusive.

Class 5:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to Second Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee.

Class 6:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to Promissory Chattel Mortgage Note secured by Chattel Mortgage dated August 23, 1933.

Class 7:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to the shares of Preferred Stock of Granada Apartments, Inc.

Class 8:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to the Common Stock of Granada Apartments, Inc.

Class 9:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property of whatever character, other than as above in the foregoing Classes 1 to 9, inclusive, enumerated, whether the same be secured or unsecured or evidenced by written instrument.

86 3. That all claims and interests of creditors and stockholders included in Classes 1 to 9, both inclusive, shall be evidenced by filing with Carl R. Chindblom, as Special Master herein, at his office at 7 South Dearborn Street, Chicago, Illinois, on or before June 23, 1937, a verified proof of claim substantially in the form prescribed in Section 57 (a) of the Bankruptcy Act, as amended, having attached thereto whether said claim or interest is evidenced by a written instrument the original of said instrument, except as otherwise provided in paragraphs 3 and 4 next succeeding.

4. That the Protective Committee may file a claim or claims with respect to the First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, or deposit with it and in filing a claim or claims with respect thereto shall, in lieu of filing with said claim or claims the bonds and interest coupons so on deposit with it, file the certificate or certificates of its depositary certifying the amount of bonds and interest coupons so on deposit.

5. That the respective Trustees (or Successor Trustees) under said respective Trust Deeds mentioned in Classes 3 and 5 hereof, may file their respective verified proof of claim on behalf of all the holders of bonds and interest coupons issued under said respective Trust Deeds, without attaching to said proof of claim the original or copy of any such bonds or interest coupons, or without attaching said respective Trust Deeds or copy thereof. Any claim filed with respect to any of said bonds and interest coupons by any owner or holder thereof, or by his duly authorized agent, when such claim is proved and allowed, shall reduce, pro tanto, any claim filed by said respective Trustees (or Successor Trustees) with respect thereto.

6. That in the case of claims evidenced by a written instrument, the original of such instrument must remain on file with the Special Master until the expiration of

the time within which objections to claims must be filed, unless prior thereto a photostatic copy thereof is filed with said Special Master.

7. That all claims and interests duly filed or evidenced within the time and manner hereinabove specified shall in due course be allowed by the Court without the taking of further proofs thereof, unless the Court shall otherwise determine, or unless on or before July 3, 1937, or within such further time as the Court may allow, written objections to the allowance of any such claims or interest shall have been filed with the said Special Master, in which event the claims or interests to which objections shall have been filed shall be proved in accordance with law, provided that prior to the filing of such objections a copy thereof shall be served on Defrees, Buckingham, Jones & Hoffman, 105 South LaSalle Street, Chicago, Illinois, counsel for the Committee.

87 8. That creditors and stockholders of Debtor may file on or before June 23, 1937 objections to the said Plan of Reorganization heretofore filed herein by the Committee. Such objections shall be filed with the Clerk of the Court and shall set forth, among other things, the principal amount of the claim, or the number of shares of stock, as the case may be, held by the objector. Prior to the filing thereof, a copy of such objections shall be served on Defrees, Buckingham, Jones & Hoffman, 105 South LaSalle Street, Chicago, Illinois, counsel for the Committee.

9. That a hearing is hereby set for July 9, 1937 at ten o'clock A. M. before the Honorable John P. Barnes in the room usually occupied by him as a courtroom in the United States Court House, Chicago, Illinois, or before such other judge as may be sitting in his place and stead, for the following purposes:

(a) The consideration of and the allowance or disallowance of claims and interests filed in these proceedings;

(b) The consideration of and hearing on any objections filed in these proceedings to the determination made of the division of creditors and stockholders of the Debtor into classes;

(c) The proposal by the Committee and the consideration by the Court of the Plan of Reorganization filed herein by the Committee;

(d) The proposal and consideration of any other Plan of Reorganization which may properly be proposed in these proceedings;

(e) The consideration of any amendments or objections which may be properly presented in these proceedings to the Plan of Reorganization filed herein by the Committee, or to any other Plan of Reorganization which may be so properly proposed in these proceedings.

(f) The confirmation of such Plan of Reorganization, subject to acceptance thereof by or on behalf of the persons required by Section 77B of the Bankruptcy Act, as amended, to accept a Plan of Reorganization as a prerequisite to a confirmation thereof by the Court;

(g) The entry of any and all orders deemed by the Court to be necessary and proper for the consummation and the carrying into effect of any Plan of Reorganization which may be confirmed by the Court, including the determination of the allowance to be made for fees and expenses;

(h) The determination of all other matters germane to these proceedings.

88 10. The stockholders and creditors of Debtor, whose claims have been allowed, may accept the said Plan of Reorganization by filing or causing to be filed written acceptances thereof in form substantially as set forth in said order, with the said Special Master, at any time prior to the confirmation of said Plan of Reorganization.

Weightstill Woods,
Trustee of Granada Apartments, Inc., a corporation.

Dated....., 1937."

(e) A copy of a form of acceptance of the said Plan of Reorganization in substantially the following form, to-wit:

"In the District Court of the United States
* * (Caption—65811) * *

Carl R. Chindbloom, Special Master,
7 South Dearborn Street,
Chicago, Illinois.

The undersigned, owner and holder of
$.....aggregate principal amount of First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 7, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corpora-

tion, as Trustee, together with appurtenant interest coupons payable on and after March 1, 1932, except with respect to bonds numbered M-141 to M-165, both inclusive;

$.....aggregate principal amount of First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, together with appurtenant interest coupons payable on and after March 1, 1932 with respect to bonds numbered M-141 to M-165, both inclusive;

$.....aggregate principal amount of Second Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, together with appurtenant interest coupons attached thereto;

.....shares of Preferred Stock of Granada Apartments, Inc.;

89 .....shares of Common Stock of Granada Apartments, Inc.;

$.....aggregate amount of unsecured claims against Debtor or its property;

and hereby acknowledged receipt of a copy of the Plan of Reorganization of Granada Apartments, Inc., a corporation, heretofore filed in the above entitled proceedings by Charles S. Tuttle, Albert J. Peterson, Louis W. Riddle, William G. Sturm and E. A. Kilmer, presently constituting the Protective Committee acting under and pursuant to the said Deposit Agreement dated April 25, 1933, with respect to the First Mortgage 6% Real Estate Gold Bonds, and hereby approves and accepts said Plan of Reorganization.

Dated....., 1937.

.....

Signature

.....

Street and Number

.....

City State"

14. (a) The Protective Committee be and hereby is directed to cause to be sent by mail within fifteen (15) days after the entry of this order to each person, as the same appear on the books and records of the Committee, who has deposited with the Protective Committee said First Mortgage 6% Real Estate Gold Bonds and interest

coupons pertaining thereto, at his post office address as the same appears on the books and records of the Committee:

(1) A copy of said Plan of Reorganization of Debtor heretofore filed herein by the Protective Committee;

(2) A copy of the notice in the form set forth in paragraph 13 of this order; and

(3) A copy of such communication or communications as the Committee may deem advisable.

(b) The Committee is directed to cause to be sent by mail within fifteen (15) days from the entry of this order to each holder of said First Mortgage 6% Real Estate Gold Bonds and interest coupons pertaining thereto, who has not deposited the same with the Committee, as the same may appear on the books and records of the Committee and as may be known, at his Post Office address, as the same appears on the books and records of the Committee, or as may be known, the following:

(1) A copy of said Plan of Reorganization of Debtor heretofore filed herein by the Protective Committee;

(2) A copy of the notice in the form set forth in paragraph 13 of this order; and

(3) A copy of the form of acceptance of the said Plan of Reorganization, as set forth in paragraph 13 of this order.

15. That the said Weightstill Woods, Trustee heretofore appointed in these proceedings be and he hereby is directed to cause to be published a notice in the form set forth in paragraph 13 of this order at least once each week for two successive weeks in a newspaper of general circulation published in the City of Chicago, Illinois, the first of said publications to be made within five (5) days after the entry of this order.

16. That the said Trustee shall make proof of the mailing directed in paragraph 13 and proof of the publication directed in paragraph 15, and the Protective Committee shall make proof of the mailing directed in paragraph 14, by filing within twenty-five (25) days from the date of the entry of this order with the Clerk of this Court the respective certificates of publication and the affidavit of the party or parties having charge of such mailing, stating in substance that such mailing has been caused to be made as heretofore directed.

17. That the Protective Committee be and it hereby is authorized and directed to cause to be printed in such

quantities as the Protective Committee shall determine are needed, the following:

91 (a) The said Plan of Reorganization, and on the first page thereof shall appear in prominent type the following legend:

"The United States District Court Has Authorized The Submission Of This Plan Of Reorganization To Creditors And Stockholders Of The Debtor And Claimants Against Its Property, But It Has Neither Approved Nor Disapproved This Plan."

(b) The notice in the form set forth in paragraph 13 of this order; and

(c) The form of acceptance of the Plan of Reorganization in the form set forth in paragraph 13 of this order.

18. That the said Carl R. Chindbloom, as Special Master be and he hereby is directed to file with the Clerk of this Court on or before the date set for the hearing provided for in paragraph 11 hereof, his report setting forth as to each of the classes 1 to 3, both inclusive, into which the creditors, stockholders, and claimants have been divided,

(a) The principal amount or number of shares, as the case may be, of the claims and interests which have been filed as herein provided;

(b) The aggregate principal amount or the aggregate number of shares, as the case may be, of claims and interests in respect of which acceptances of the Plan of Reorganization have been filed, as herein provided; and

(c) The percentage of the amount or number of shares shown, as the case may be, in (a) represented by the amount and number of shares, as the case may be, as shown in (b).

19. The Court reserves jurisdiction to make from time to time such further orders amplifying, extending, limiting, or otherwise modifying this order as may at any time seem proper to the Court upon such notice or without notice as the Court shall deem proper.

Enter:

Barnes,
Judge.

Dated: May 24, 1937.

Filed May 24, 1937. 92 And on, to wit, the 24th day of May, 1937, came the Protective Committee by its attorneys and filed in the Clerk's office of said Court its certain Plan of reorganization in words and figures following, to wit:

93 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—65811.) • •

PLAN OF REORGANIZATION OF GRANADA APARTMENTS, INC.

The Protective Committee under and pursuant to the certain Deposit Agreement dated April 25, 1933, with respect to the First Mortgage 6% Real Estate Gold Bonds, secured by Trust Deed dated September 1, 1928, from Granada Hotel Corporation to Chicago Trust Company, as Trustee (Charles S. Tuttle, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer being the present members thereof) represent that there are deposited under said Deposit Agreement in excess of 67% in principal amount of the outstanding unsubordinated First Mortgage 6% Real Estate Gold Bonds of said issue.

For proposal at a hearing duly noticed for its consideration, the Protective Committee submits the following Plan of Reorganization (hereinafter referred to as the "Plan"):

General Statement of Debtor's Property.

All of the property and assets of Debtor are to be dealt with by the Plan, and from information available to the Protective Committee such property and assets consist principally of the premises located at 525 Arlington Place, Chicago, Illinois, described as follows:

Lots thirty-two (32) and thirty-three (33) of Outlot "C" in Wrightwood, a Subdivision of the Southwest Quarter of Section twenty-eight (28), Township forty (40) North, Range fourteen (14), East of the Third Principal Meridian, in Cook County, Illinois.

Indebtedness of Debtor.

From information available to the Protective Committee, it appears that the Debtor has the following capitalization and the indebtedness:

(a) Unpaid General Property Taxes (not including interest and penalties):

*1928 (balance)	$9,041.86	
1931 (balance)	2,747.09	
1932 (balance)	6,752.60	
1933 (balance)	5,916.41	
1934	7,400.38	
1935	8,406.82	$ 39,366.16

*Note: This is represented by outstanding tax certificate.

(b) First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee.

Principal amount of unsubordinated bonds outstanding 485,500.00
with appurtenant interest coupons maturing March 1, 1932 and thereafter.

94 (Judgment has been taken in the amount of $4,630 with respect to certain unsubordinated First Mortgage 6% Real Estate Gold Bonds.)

Principal amount of subordinated bonds outstanding 25,000.00
with appurtenant interest coupons maturing March 1, 1932 and thereafter.

(Note: The first Mortgage 6% Real Estate Gold Bonds have been guaranteed by Fred Mateer, Elof W. Wenstrand and Carl G. Wenstrand.)

(c) Second Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928, from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee..

Principal amount outstanding..... $357,000.00
with appurtenant unpaid interest coupons.

(d) Promissory Chattel Mortgage Note secured by Chattle Mortgage dated August 28, 1933, held by Successor Trustee under Trust Deed securing First Mortgage 6% Real Estate Gold Bonds as collateral security for the payment of said Bonds.

Principal amount of Note	75,000.00

(e) Capital Stock—

Preferred stock of the par value of $100 per share	1000 shares
Common stock of the par value of $5 per share	1000 shares

The foregoing figures do not include unsecured claims against the Debtor or other interests in its property or assets which may be duly proved and allowed in these proceedings, the amount thereof not being ascertainable until so proved and allowed, and do not include General Property Taxes for the years 1936 and 1937 which now constitute a lien against the real property of Debtor, but which have not as yet been billed, so that the amount thereof is not ascertainable, and do not include franchise or personal property taxes or other like or unlike taxes or assessments (except as set forth above) imposed by public authorities.

There is due and owing City National Bank and Trust Company of Chicago, as Successor Trustee under the Trust Deed securing the First Mortgage 6% Real Estate Gold Bonds, for its own use and benefit, certain sums established by decree of foreclosure of said Trust Deed entered December 18, 1936, in proceedings pending in the Superior Court of Cook County, Illinois, in cause numbered 519151.

There is outstanding a Receiver's Certificate of Indebtedness, dated August 23, 1933, under which there is still due and owing the principal amount of $4,000, plus interest thereon, which Certificate of Indebtedness was issued pursuant to court order entered in the said foreclosure proceedings above referred to.

There is a Conditional Sales Contract, dated April 12, 1930, by and between Debtor and LaSalle Furniture and Supply Company, covering the furniture located in the said premises of Debtor, under which said contract there is a balance still due and owing of approximately $3,000.

Foreclosure Proceedings.

Proceedings are now pending in the Superior Court of Cook County, Illinois, in cause numbered 519151 for the foreclosure of the Trust Deed securing First Mortgage 6% Real Estate Gold Bonds. In said proceedings a decree of foreclosure was entered on December 18, 1936, but no sale has been had pursuant thereto.

95

Receivership Proceedings.

Proceedings are pending in the Circuit Court of Cook County, Illinois, in cause numbered 37-C 3704 in which proceedings, on April 14, 1937, a Receiver was appointed in connection with the property and assets of the Debtor.

Plan of Reorganization.

A. Reorganized Company.

All property and assets of Debtor shall be conveyed, transferred and assigned to a new corporation, free and clear of all claims of creditors and stockholders of the Debtor, except as otherwise provided in the Plan. The new corporation is hereinafter referred to as "Reorganized Company."

B. Trust Agreement.

All of the outstanding shares of stock of the Reorganized Company are to be held and owned under a Trust Agreement by five (5) Trustees who are to issue Participation Certificates representing participating shares (herein sometimes called "Participating Shares") in the Trust covering such shares of stock. Such certificates are herein sometimes called "Participation Certificates." Two of the initial Trustees under such Trust Agreement shall be designated by the Court and three of such initial Trustees shall be designated by the Committee subject to the approval of the Court. The shares of stock shall be issued to the Trustees and Participation Certificates will be issued and distributed in accordance with the provisions of Section C hereof.

The Trust Agreement is to continue in effect for ten (10) years after the date thereof unless terminated or extended as therein provided. The Trust Agreement may be

terminated at any time by the action of a majority of the Trustees or by the action of the holders of Participation Certificates representing a majority of the shares in the Trust, who must also be a majority of the holders of Participating Shares in the Trust. The Trust Agreement shall provide that the question of the termination of the Trust Agreement shall be submitted biennially to holders of Participation Certificates, and if the holders of Participation Certificates representing a majority of the shares in the Trust, who are also a majority of the holders of such shares, shall vote in favor of its termination, the Trust Agreement shall terminate. The Trust Agreement may also be extended by action of a majority of the Trustee, subject to the right of holders of Participation Certificates to withdraw their proportionate amount of shares in the Reorganized Company or to the property held under the Trust Agreement, as therein provided.

The Trust Agreement shall provide that the Trustees shall have power to elect the board of Directors of the Reorganized Company and to vote such shares for any purpose, including a sale of all or substantially all of the assets of the Reorganized Company, and to exercise all other powers of owners of shares of the Reorganized Company, or of any other property or things of value held by the Trust, but that the shares of the Reorganized Company shall not be sold or voted by the Trustees in favor of the sale of the real estate of Debtor, as hereinabove set forth, and that the Trust Agreement shall not be amended in a manner which, in the judgment of the Trustees, would materially and adversely affect substantial rights of the holders of Participation Certificates if, after notice to such holders, the holders of Participation Certificates representing at least one-third of the Participating Shares in the Trust then outstanding shall dissent from any such
96 proposed action within the time and in the manner provided in the Trust Agreement, but such limitation upon voting in respect of the sale of said real estate shall not apply to voting in respect of any leasing thereof, or of any mortgage of, or the creation of any lien on, the said real estate or on any property used in connection therewith.

The Trustees shall also have power to receive and distribute to holders of Participation Certificates all dividends on and proceeds and avails of shares of the Reorganized Company held by the Trustees, less expenses and prior charges, as provided in said Trust Agreement. Vacancies in the Trustees are to be filled by the remaining Trustee or

Trustees. The Reorganized Company is to pay the expenses and reasonable compensation of the Trustees as such, and such payment will be secured by a lien upon the property and assets held under the Trust Agreement.

C. Basis of Issuance of Participating Shares.

1. Participating Certificates representing Participating Shares in the Trust covering the shares of the Reorganized Company are to be distributed to the holders of the securities, claims and interests referred to in this Section C, on the following basis, but expressly subject to the provisions of Paragraph 2 following:

(a) Holders of Unsubordinated First Mortgage 6% Real Estate Gold Bonds will be entitled to receive one Participating Share for each $100 principal amount of said bonds for the principal thereof.

(b) The holders of Subordinated First Mortgage 6% Real Estate Gold Bonds will be entitled to receive one Participating Share for each $200 principal amount of said bonds for the principal thereof.

(c) The holders of judgments against the Debtor, based on First Mortgage 6% Real Estate Gold Bonds, will be entitled to receive one Participating Share for each $100 in pricipal amount of First Mortgage 6% Real Estate Gold Bonds in respect of which judgment was taken and in lieu of participation on account of said bonds.

(d) The holders of Second Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928, from the Granada Hotel Corporation to Chicago Trust Company, as Trustee, will be entitled to receive 357 Participating Shares for the principal thereof, on the basis of one Participating Share for each $1,000 prinicpal amount of said bonds for the principal thereof.

(e) The holders of unsecured claims against the Debtor will be entitled to receive one Participating Share for each $5,000 aggregate amount of such claim, provided that not more than 8 Participating Shares shall be issued with respect to said unsecured claims.

(f) The holders of shares of Preferred Stock of Debtor will be entitled to receive one Participating Share for each 25 shares of said Preferred Stock, providing that no more than 40 Participating Shares shall be issued in respect of said shares of Preferred Stock.

(g) The holders of shares of Common Stock of Debtor will be entitled to receive 1 Participating Share for each 100 shares of Common Stock, provided that not more

than 10 Participating Shares shall be issued in respect of said Common Stock of Debtor.

2. No Participating Share or Shares shall be issued:

(a) To any holder of First Mortgage 6% Real Estate Gold Bonds, unless and until there shall have been surrendered for cancellation to such agency as the Court may approve, the bond or bonds, in respect of which Participating Share or Shares is or are to be issued, together with all appurtenant interest coupons payable March 1, 1932 and thereafter. Cancellation thereof shall satisfy such bond or bonds and all interest due thereon, whether evidenced by coupons or otherwise.

(b) To any holder of judgment based on First Mortgage 6% Real Estate Gold Bonds, unless and until there shall have been delivered to such agency as the Court
97 may approve, a discharge and satisfaction of said judgment, in respect of which Participating Share or Shares is or are to be issued.

(c) To any holder of Second Mortgage 6% Real Estate Gold Bonds, unless and until there shall have been surrendered for cancellation to such agency as the Court may approve, the bond or bonds in respect of which Participating Share or Shares is or are to be issued, together with all appurtenant interest coupons. Cancellation thereof shall satisfy such bond or bonds and all interest due thereon, whether evidenced by coupons or otherwise.

(d) To any holder of unsecured claims, unless and until there shall have been delivered to such agency as the Court may approve, an instrument of release of such claims in respect of which Participating Share or Shares is or are to be issued accompanied by any written instrument upon which such claims may be based.

(e) To any holder of shares of Preferred Stock (unless and until there shall have been surrendered for cancellation to such agency as the Court may approve the Certificate or Certificates evidencing such shares in respect of which Participating Share or Shares is or are to be issued.

(f) To any holder of shares of Common Stock, unless and until there shall have been surrendered for cancellation to such agency as the Court may approve the Certificate or Certificates evidencing such shares in respect of which Participating Share or Shares is or are to be issued.

3. In case any holder is unable to surrender for cancellation securities in respect of which Participating

Share or Shares is or are to be issued as aforesaid, said Participating Shares may be issued to such holders otherwise entitled thereto upon and complying with such terms and conditions in connection therewith as the Court may determine.

4. Participating Shares which are issuable in respect of First Mortgage 6% Real Estate Gold Bonds held by the Protective Committee shall be delivered to the Protective Committee, and shall, in accordance with and subject to the provisions of said Deposit Agreement dated April 25, 1933 be transferred and/or distributed by the Protective Committee as soon as practicable to and among the holders of Certificates of Deposit.

D. Treatment of Any and All Other Claims except as Provided for in Section C.

1. All claims entitled to priority over existing mortgages, except taxes which are a lien upon the property and assets of the Debtor, shall be paid in cash in full, or, with the consent of the party entitled to such payment, shall be assumed by the Reorganized Company, in which event they shall be paid in full before a declaration setting aside the payment of any dividends upon the Capital Stock of the Reorganized Company.

2. All taxes which constitute a lien upon the property and assets of Debtor, and which are prior to existing mortgages of Debtor, shall be assumed and paid by the Reorganized Company, either by means of the new financing contemplated by Section F hereof, or in regular course, subject to the same right of contest thereof as the Debtor would have had if the reorganization provided for herein had not been consummated.

3. All claims for interest accruing subsequent to September, 1, 1931, upon or in reference to First Mortgage 6% Real Estate Gold Bonds, and all claims for interest upon or in reference to Second Mortgage 6% Real Estate Gold Bonds, shall be disregarded and the holders thereof shall be entitled to receive neither cash, Participating Shares nor any other securities or things of value whatsoever in respect thereof. It is contemplated that all such claims for interest are held by those who will become entitled to Participation Certificates under and subject
98 to the provisions of Section C hereof. If and to the extent that holders of such interest claims are not holders of securities in respect of the principal of which Participating Shares are to be issued under Section C hereof, protection for the realization by such holders of

the value of such claims, when proved and allowed, may be provided by an appraisal thereof made under the direction of the Court, and the value so found shall be paid in cash to the persons entitled thereto.

4. The claim, as allowed by the Court, of City National Bank and Trust Company of Chicago, as Successor Trustee under Trust Deed securing First Mortgage 6% Real Estate Gold Bonds, for amounts due and owing to it for its own use and benefit, as established by the decree of foreclosure entered December 18, 1936, in proceedings pending in the Superior Court of Cook County, Illinois, in cause numbered 519151, shall be paid in the same manner and upon the same terms and conditions as costs of administration in these proceedings are paid, pursuant to the terms and provisions of Section E hereof.

5. Payment of the said Receiver's Certificate now outstanding issued in said foreclosure proceedings shall be assumed and paid in cash by the Reorganized Company.

6. The said Conditional Sales Contract covering the furniture located in the premises of Debtor shall be assumed by the Reorganized Company and payments shall be made thereon by the Reorganized Company in accordance with the terms and provisions thereof, and upon the payment of said balance by the Reorganized Company, title to such furniture shall be assigned and transferred to the Reorganized Company.

7. Executory contracts to which the Debtor is a party, including any unexpired leases in which the Debtor is lessor, shall not be affected by the Plan except to the extent that they may be modified or rejected with the approval of the Court.

E. Costs, Expenses and Allowances.

All costs of administration and other allowances made or approved by the Court in the reorganization proceedings are to be paid in cash in full, or, with the consent of the party entitled to such payment, shall be assumed and paid by the Reorganized Company in cash, or by its evidences of indebtedness, as the Court may direct. Without limiting the generality of the foregoing, such costs and allowances shall include reasonable compensation for any and all services rendered and reimbursement for the actual and necessary expenses incurred by parties entitled thereto in connection with the Plan, or in connection with the reorganization proceedings, in conformity with Section 77B of the Bankruptcy Act, as

amended. All such costs and allowances so made and approved and so assumed by the Reorganized Company with the consent of any such party entitled thereto shall be paid in full before any dividend is declared, paid or set apart upon any shares of the Reorganized Company.

The Committee in its work has used certain of the facilities and personnel of Central Republic Trust Company and City National Bank and Trust Company of Chicago, for which it is anticipated that compensation will be requested. Those members of the Committee who are officers or employees of the City National Bank and Trust Company of Chicago and who were officers or employees of Central Republic Trust Company or its predecessors, receive and have received compensation for their services as such officers and employees. Such compensation is an element of the cost of the services furnished by Central Republic Trust Company and City National Bank and Trust Company of Chicago in connection with this Plan.

99 F. New Financing.

To provide funds or securities for the payment of the costs of administration and other allowances made or approved by the Court and of claims which are to be paid in cash in full (including taxes), and to provide funds for working capital required by the operation of the Reorganized Company, the Reorganized company may, subject to the approval of the Court, issue evidences of indebtedness and borrow such sums as may be necessary in the premises, and as security for payment thereof, may mortgage, pledge or otherwise encumber or hypothecate all or any part of its property and assets.

G. Means for Execution of the Plan.

1. A new corporation will be organized with power to acquire and hold the property and assets of the Debtor and to carry on the business heretofore conducted by the Debtor, said corporation to be the "Reorganized Company" mentioned in the Plan. The new corporation shall have a Board of Directors consisting of five (5) members and the initial Board of Directors to be elected shall be the persons selected as Trustees under the Trust Agreement. To such new corporation shall be conveyed, transferred and assigned all of the property and assets of the Debtor, free and clear, however, of all claims of stockholders and creditors of Debtor, except as other-

wise provided in the Plan. The capital stock of the new corporation shall consist of such number of shares of stock, all of the same class and without par value, as may be necessary or appropriate for the purpose of consummating the Plan.

2. All liability and indebtedness evidenced by First Mortgage 6% Real Estate Gold Bonds, Second Mortgage 6% Real Estate Gold Bonds and any and all interest pertaining thereto, shall be cancelled and extinguished and the respective Trust Deeds securing the First Mortgage 6% Real Estate Gold Bonds and the Second Mortgage 6% Real Estate Gold Bonds shall be released of record by the respective Successor Trustees thereunder, and any and all cash and securities held by said Successor Trustees, or any of them, for the use and benefit of the holders of the securities issued and secured by said respective Trust Deeds, shall be turned over to the Reorganized Company. In the event that said Successor Trustees under said Trust Deeds, or any of them, fail, neglect or refuse to execute and deliver such instruments as may be necessary or appropriate to evidence such release, then a Special Master shall be appointed by the Court for such purpose.

3. All liability and indebtedness evidenced by chattel mortgage note, including interest pertaining thereto, shall be cancelled and extinguished and the chattel mortgage securing the said chattel mortgage note shall be released of record by the Successor Trustee thereunder. In the event that said Successor Trustee under said chattel mortgage shall fail, neglect or refuse to execute and deliver such instrument as may be necessary or appropriate to evidence such release, then a Special Master shall be appointed by the Court for such purpose.

4. The Successor Trustee under the Trust Deed securing the First Mortgage 6% Real Estate Gold Bonds shall execute and deliver an instrument of sat sfaction of the decree of foreclosure entered on December 18, 1936, in proceedings pending in the Superior Court of Cook County, Illinois, in case numbered 519151, and in the event that such Successor Trustee shall fail, neglect or refuse to execute and deliver such instrument of satisfaction as may be necessary or appropriate to satisfy said decree of foreclosure, then a Special Master shall be appointed by the Court for such purpose.

5. The shares of stock of the Reorganized Company shall be issued to the Trustees under the Trust Agree-

ment, and the Trustees under said Trust Agreement shall forthwith cause to be issued Participating Shares in accordance with the provisions of Section C hereof.

6. The new financing contemplated by the Plan will be accomplished in accordance with the provisions of Section F hereof, and funds will be made available to the extent necessary to consummate the Plan.

7. In general, all things for the execution and consummation of the Plan are to be undertaken and accomplished as the Court may determine to be feasible and appropriate. Anything herein to the contrary notwithstanding, the Court may authorize the taking of any action and the use of any methods and procedure and the entering into such arrangements and agreements which the Court may determine to be necessary or advisable to accomplish the results contemplated by the Plan, and which are consistent therewith.

8. The Protective Committee and its counsel shall, under the direction of the Court, supervise and assist generally in the execution and consummation of the Plan, and in that behalf are expressly authorized and empowered to act upon any construction of the Plan approved by the Court and, subject to the approval of the Court, may correct any defects or supply any omissions or recognize any inconsistencies in the Plan.

H. Confirmation of Plan.

1. The Plan will not become effective unless and until it has been accepted in writing, and such acceptance shall have been filed in the above entitled proceedings by or on behalf of holders of at least two-thirds in aggregate principal amount of said unsubordinated First Mortgage 6% Real Estate Gold Bonds.

The Protective Committee shall have the right and power to consent to and accept this Plan in respect of First Mortgage 6% Real Estate Gold Bonds on deposit with it, excepting only in respect of such bonds covered by Certificates of Deposit the holders of which shall dissent to this Plan in the manner provided in and by the said Deposit Agreement dated April 25, 1933, relating to said bonds. With its acceptance of the Plan in writing, the Committee shall file a statement of the principal amount of said bonds deposited with it covered by Certificates of Deposit the holders of which shall not have dissented from this Plan, as provided by said Deposit Agreement, and such acceptance in writing shall be an affirmative acceptance by and be binding upon the hold-

ers of Certificates of Deposit covering said bonds so deposited who shall not have so dissented.

2. No persons consenting to or accepting the Plan shall be bound by such consent or acceptance unless a valid order confirming the Plan shall be entered, and any person, firm or corporation advancing funds to the Reorganized Company for the purpose of consummating the Plan shall have a first and prior lien on all funds and property and assets of the Reorganized Company as security for the repayment of such funds, upon any reversal, setting aside, vacating or holding void or invalid of the order or decree confirming the Plan.

I. Modification of Plan.

Changes and modifications of the Plan may be made in the manner provided in Section 77B of the Bankruptcy Act, as amended. Anything contained in the said
101 Deposit Agreement dated April 25, 1933, under which the Protective Committee is acting, to the contrary notwithstanding, any change or modification in the Plan which is made with the approval of the Court shall be binding upon depositors under said Deposit Agreement who have not dissented from the Plan on its original submission to such depositors by the Protective Committee, and the Plan as so changed or modified need not be resubmitted to such depositors unless the Court shall determine that such change or modification is materially adverse to the interests of such depositors.

Dated, May 21, 1937.

102 And on, to wit, the 14th day of September, 1937, came the City Natl. Bank & Tr. Co. of Chicago by its attorneys and filed in the Clerk's office of said Court its certain Proof of Claim (filed in Referee's office, June 23, 1937), in words and figures following, to wit:

103 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Sept. 14, 1937.

(Caption—65811)

PROOF OF CLAIM.

State of Illinois, } ss.
County of Cook. }

At Chicago, in the Northern District of Illinois, in the Eastern Division thereof, on the 23rd day of June, 1937 came G. R. Helffrich and made oath and says:

1. That he resides at Park Ridge, in the County of Cook and State of Illinois; that he is over 21 years of age, and is Trust Officer of City National Bank and Trust Company of Chicago (hereinafter for convenience called "Claimant"), a banking corporation having its principal office and place of business in the City of Chicago, Illinois, and as such is duly authorized to make this proof of claim.

2. That this claim is made by claimant as Successor Tru under the certain Trust Indenture from Granada Hotel Corporation, a corporation, the Debtor in the above entitled proceedings, to Chicago Trust Company, as Trustee, dated September 1, 1928, and recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on
104 October 1, 1928, as Document No. 10161996, on behalf of itself as such Successor Trustee and of the holders of Bonds and Interest Coupons appertaining thereto issued and outstanding under such Trust Indenture.

3. That by a Supplemental Indenture dated September 1, 1928 between Granada Hotel Corporation, a corporation, the Debtor in the above entitled proceedings, and Chicago Trust Company, as Trustee, Bonds numbered M-141 to M-165, both inclusive, aggregating $25,000.00 in principal amount, together with interest coupons appertaining thereto, were subordinated to the lien of the remaining Bonds and Interest Coupons appertaining thereto secured by the said Trust Indenture.

4. The Debtor herein is truly and justly indebted to Claimant, as Successor Trustee, in the sum of Four Hundred Eighty-five Thousand Five Hundred Dollars ($485,500.00) in respect of unsubordinated unpaid Bonds in addition to Interest Coupons issued and outstanding under said Trust Indenture, together with interest thereon,

and is justly and truly indebted to Claimant, as Successor Trustee, in the sum of Twenty-five Thousand Dollars ($25,000.00) in respect of subordinated Bonds in addition to Interest Coupons issued and outstanding under said Trust Indenture, together with interest thereon.

5. That, in addition to the claim of Claimant, as Successor Trustee, for the use and benefit of the holders of said Bonds and Interest Coupons appertaining thereto issued and outstanding under said Trust Indenture, said Debtor is further indebted to Claimant, as Successor Trustee, for the use and benefit of Claimant, in the sum of Ten Thousand Eight Hundred Forty-nine Dollars and Ninety Cents ($10,849.90); that said indebtedness was
105 established by Decree entered December 18, 1936 in the Superior Court of Cook County, Illinois, in proceedings pending therein for the foreclosure of the lien of said Trust Indenture entitled "William A. Thuma, complainant, *vs.* Granada Hotel Corporation, a corporation, et al., defendants, and City National Bank and Trust Company of Chicago, a corporation, as Successor Trustee under Trust Deed recorded as Document No. 10161996, cross-complainant, *vs.* Granada Hotel Corporation, a corporation, and Granada Apartments, Inc., a corporation, et al., cross-defendants, No. 519151"; that the various items composing said indebtedness as so set forth in said Decree are as follows:

Fees of cross-complainant for services as Successor Trustee $2560.00
Cross-complainant's solicitors' fees 8250.00
(being the total amount as allowed in said Decree, less the value of the services not rendered at the date of the entry of the Decree as so found by said Decree.)
Court Reporter's and Stenographer's fees..... 39.90;

that in accordance with the terms of said Trust Indenture and pursuant to the terms of said Decree, said indebtedness in the sum of $10,849.90 is an additional lien upon the property secured by said Trust Indenture and is prior and superior to the lien of said unpaid Bonds and Interest Coupons appertaining thereto, together with interest thereon.

6. That the consideration for said indebtedness is money loaned and advanced, services rendered, and costs and expenses incurred, as hereinbefore set forth.

7. That no part of said indebtedness has been paid.

106 8. That there are no set-offs or counterclaims against said indebtedness.

9. That neither said Claimant, nor any person by order of said Claimant, or to the knowledge or belief of said Claimant, for the use of said Claimant, has had or received any manner of security for said indebtedness whatever, other than the security afforded by said Trust Indenture under which said bonds were issued and other than a certain Promissory Note dated August 23, 1933 in the amount of $75,000.00 made by Debtor and secured by Chattel Mortgage dated August 23, 1933, and filed for record in the office of the Recorder of Deeds of Cook County, Illinois, on August 24, 1933 as Document No. B-702627.

10. That no preference or priority in payment is claimed for the said indebtedness, except as provided in said Trust Indenture and said decree.

11. That Claimant does not waive any of its rights to the security afforded by it by said Trust Indenture and said Chattel Mortgage and does not waive its liens upon the property mortgaged and pledged to Claimant thereunder, but expressly reserves said liens, and does not consent that said property be sold free and clear of the liens.

G. R. Helfrich.

Subscribed and sworn to before me this 23rd day of June, A. D. 1937.

J. B. Patterson,
(Seal) *Notary Public.*

My Commission expires: Dec. 2, 1939.

107 And on, to wit, the 14th day of September, 1937, came the Bondholders' Protective Committee by its attorneys and filed in the Clerk's office of said Court its certain Proof of Claim (filed June 23, 1937), in words and figures following, to wit;

Filed Sept. 14, 1937. 108 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—65811) * *

PROOF OF CLAIM OF BONDHOLDERS' COMMITTEE.

State of Illinois, } ss.
County of Cook. }

At Chicago, in the County of Cook and State of Illinois, on the 23rd day of June, 1937, came W. G. Sturm and made oath and says:

1. That he is a member of the Bondholders' Protective Committee (C. S. Tuttle, Albert J. Peterson, Lewis W. Riddle, W. G. Sturm and E. A. Kilmer, presently constituting the members thereof) which said Protective Committee (hereinafter called "claimant") was constituted and is acting under and by virute of the certain Deposit Agreement dated April 25, 1933, relating to the First Mortgage Six Per Cent Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, a copy of which Deposit Agreement is attached hereto as Exhibit "A", and by reference is incorporated herein and made a part hereof.

2. That he is duly authorized and empowered to execute and file this proof of claim on behalf of claimant.

3. That claimant is the owner and holder of $331,109 600 principal amount of said First Mortgage Six Per Cent Real Estate Gold Bonds together with certain interest coupons appertaining thereto; and that said Bonds are just and lawful obligations of Granada Apartments, Inc., a corporation, Debtor herein, and are secured by a first and prior lien on the property of Debtor.

4. That the said First Mortgage Six Per Cent Real estate Bold Bonds are on deposit with City National Bank and Trust Company of Chicago under the terms of said Deposit Agreement, the amount and number of Bonds being set forth in the Certificate of said Depositary attached hereto as Exhibit "B" and by reference thereto is incorporated herein and made a part hereof.

5. That Granada Apartments, Inc., a corporation, Debtor herein, was at and before the filing of the peti-

tions in these proceedings, and still is, justly and truly indebted to claimant, in the sum of $331,600, with interest thereon, from September 1, 1931, in respect of the said First Mortgage Six Per Cent Real Estate Gold Bonds so deposited.

6. That the consideration of said indebtedness is money loaned and advanced; that no part of said indebtedness has been paid; that there are no set-offs or counterclaims to said indebtedness; that no judgment has been rendered for said indebtedness; that no security has been received by said claimant on account of said indebtedness other than the security afforded by the Trust Deed under which said Bonds and Interest Coupons were issued.

7. That claimant does not waive any of its rights to the security afforded by said Trust Deed and does not waive its lien upon the property mortgaged or
110 pledged thereunder and does not consent that said property be sold free and clear of the lien of said Trust Deed.

8. That no preference or priority in payment is claimed for said debt except the preference and priority which is provided by the terms of said Trust Deed under which said Bonds and Interest Coupons have been issued and are outstanding.

W. G. Sturm.
W. G. Sturm.

Subscribed and sworn to before me this 23rd day of June, A. D. 1937.

Berthel W. Peterson,
(Seal) *Notary Public.*

My commission expires: 9/14/39.

111 And on, to wit, the 8th day of July, 1937, there was filed in the Clerk's office of said Court certain objections of Weightstill Woods, Trustee, which had been transmitted in words and figures following, to wit:

Filed July 8, 1937. 112 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—65811) * *

OBJECTIONS BY COURT TRUSTEE TO CLAIMS FILED BEFORE THE SPECIAL MASTER CARL R. CHINDBLOOM.

The Trustee appointed by the Court in this cause, now presents his objections to the claims before the Master:

First: Trustee respectfully shows that claims numbered 4, 5, 6, 8, 9, 10, and 11, are each informal, lacking the original documents on which claim purports to be made, and are not allowable under terms of order May 24th, 1937.

Second: Trustee respectfully further shows that claims made by paragraphs 9 and 12 of claim 4; also the whole of claim 5; also the whole of claim 6; also the whole of claim 8; also paragraphs 5 and 9 of claim 9; also the whole of claims 10 and 11; are each and all unfounded, lacking in merit, invalid, and should be disallowed entirely in relation to this proceeding in this Court.

Wherefore your Trustee asks that said claims be disallowed.

Weightstill Woods,
Trustee.

113 And on, to wit, the 8th day of July, 1937, came Carl R. Chindblom, Referee in Bankruptcy, and filed in the Clerk's office of said Court his certain Report in words and figures following, to wit:

114 IN THE DISTRICT COURT OF THE UNITED STATES. Filed July 8, 1937.

* * (Caption—65811) * *

REPORT OF CARL R. CHINDBLOM, REFEREE IN BANKRUPTCY, AS SPECIAL MASTER, UPON FILING OF CLAIMS AND OBJECTIONS THERETO, AND ACCEPTANCES OF PLAN OF REORGANIZATION.

To the Honorable John P. Barnes, Judge of the District Court of the United States, for the Northern District of Illinois, Eastern Division, in Bankruptcy Sitting:

Honorable Sir:

In the above matter, your Honor on May 24, 1937 entered an order providing, inter alia, that for the purpose of a Plan of Reorganization and its acceptance the creditors and stockholders of the Debtor should be divided into certain classes stated in said order and in the Schedule hereinafter mentioned; that claims and interests against the Debtor or its property should be evidenced by filing with me on or before June 23, 1937 verified proofs of claims substantially in the form prescribed by Section 57a of the Bankruptcy Act, as amended, having attached thereto the original instruments, where such claims or interests are evidenced thereby, except as otherwise provided in said order; that all claims and interests, so filed as aforesaid,

115 should be allowed by this Court in due course, without taking further proofs thereof, unless the Court shall otherwise determine or unless on or before July 3, 1937, or within such further time as the Court may allow, written objection to the allowance of any such claim or interest shall have been filed with the undersigned Special Master, in which event claims or interests to which objection shall have been filed shall be proved in accordance with law, provided, that, prior to the filing of such objection, a copy thereof shall be served upon counsel for the Bondholders' Committee; that the undersigned Special Master shall report to the Court as soon as may be after the date fixed for filing objection to claims the names of all persons filing claims and interests, the class in which each such claim or interest belongs and the amount of such claim or interest, noting any objection or objections which may have been filed to the allowance of any such claim or interest; and that creditors and stockholders whose claims

have been allowed may, at any time up to the time of confirmation of the Plan of Reorganization, accept said Plan by filing or causing to be filed written acceptances thereof with the undersigned as Special Master.

Pursuant to the aforesaid order, I hereby Report that proofs of claims and interests have been filed with me as shown in the Schedule hereto attached and made a part of this Report.

As shown in said Schedule, objections were filed to various claims by Weightstill Woods, Trustee herein. Said objections were of two general classes and were included in a single "blanket objection," as follows:

First: That claims numbered 4, 5, 6, 8, 9, 10 and 11 are "each informal, lacking the original documents on which
claim purports to be made, and are not allowable un-
116 der terms of order May 24th, 1937."

Second: That claims in paragraphs 9 and 12 of claim No. 4; the whole of claims Nos. 5, 6 and 8; paragraphs 5 and 9 of claim No. 9; and the whole of claims Nos. 10 and 11 "are each and all unfounded, lacking in merit, invalid, and should be disallowed entirely in relation to this proceeding in this Court."

Upon request of counsel for the Bondholders' Committee, I set a hearing on the aforesaid objections for July 7, 1937, at 11 A. M., at which time I was advised that your Honor had indicated a desire that I have a hearing and make report upon said objections. Although apparently no formal order to that effect has been entered, I conducted such hearing so far as possible with the situation existing as hereinafter shown.

As to the objections of the first class, the claimants agreed to present and did present in my office original documents necessary to sustain their claims in the matter of claims numbered 4, 5, 6, 8 and 10. Said objections to said claims should therefor be overruled.

In the matter of claim No. 9, this claim was filed by the City National Bank & Trust Company of Chicago, as Successor Trustee to Chicago Trust Company as Trustee under a certain trust deed, and under the aforesaid order of your Honor did not require the presentation of instruments upon which the claim is based. The first objection to said claim should therefore be overruled.

In the matter of claim No. 11, which is a claim for personal property taxes, filed by the State's Attorney of
117 Cook County, Illinois, I held that said claim was not based upon an instrument in writing and therefore

recommend to be overruled said objections of class 1 to said claim.

Objections of the second class, mentioned above, go to the merits of the claims above listed.

With reference to the 9th paragraph of claim No. 4, the note upon which said claim is based was filed subsequent to said hearing. No proof was offered upon the merits of said claim, but the Special Master was advised that your Honor will decide upon the ownership of the securities involved.

With reference to the 12th paragraph of claim No. 4, the certificates of stock were subsequently presented with said claim, but no further proof was presented. A separate claim, bearing No. 5, was filed as to the same stock. The Special Master was advised that your Honor will determine as to the ownership of the stock involved in claim No. 5.

With reference to claim No. 6, owned by the Reconstruction Finance Corporation, the objections in question were presented before me, but no proof was offered on the merits.

With reference to claim No. 8, no proof was offered on the merits.

With reference to paragraph 5 of claim No. 9, no proof was offered on the merits.

With reference to paragraph 9 of claim No. 9, I find that said paragraph is not in effect a claim but is merely a recital of the security claimed to be held for said claim,
118 consisting both of a real estate trust deed and a chattel mortgage.

With reference to claim No. 10, the same appears to be a duplicate of claim No. 4, which, as above shown, your Honor is to pass upon.

With reference to claim No. 11, as above shown, said claim is a tax claim for personal property taxes under the laws of Illinois. No proof was presented upon the merits as to said claim.

With reference to claim No. 12, the Trustee stated that it was his purpose to file objections to said claim by reason of the lack of presentation of instruments, but the bonds upon which said claim is based were subsequently presented before me and therefore no such objections will lie. No proof was made upon the merits of said claim.

After the aforesaid hearing a claim was filed with me and numbered "14," upon leave granted by your Honor,

by Edwin Rosenberg, alleged to be upon a judgment in a case entitled "Edwin Rosenberg *vs.* Granada Apartments, Inc.," in the sum of $4,630.00, in the Municipal Court of Chicago, obtained on March 8, 1937. No opportunity was given for filing of objections to said claim.

As above shown, there was no hearing upon the merits of any of the claims to which objections were filed. Where documents were presented and no objections made to the documents themselves, I am of the opinion that a prima facie proof of the claim was made. I am also of the opinion that the aforesaid second objection is too vague and general and should specify or particularize the exceptions.

Counsel for the Trustee suggested that the claims not reserved for hearing by your Honor be allowed without prejudice to the filing of particular objections hereafter, especially in the case of liquidation instead of conclusion of the proceeding under Section 77B. This course was especially urged with reference to tax claims, as these claims doubtless include interest, penalties and costs, in addition to assessments based upon estimates. I recommend that such a course be followed.

As above shown, I have not found any formal order directing me to hear and determine objections to claims, but counsel agreed that your Honor had stated on the 2d instant that you desired objections to be heard by me. My office was advised of this situation late on Friday, the 2d instant, when the hearing on objections was set for the 7th instant because of the intervention of Saturday, Sunday and Monday, the 3rd, 4th and 5th of July, and the necessity for time to give notice to claimants of such hearing.

Compensation of Special Master.

I hereby certify that, in my opinion, a reasonable and customary fee for my services in the hearing and consideration of this matter and the preparation of this Report is the sum of $60.00. I further certify that, in my opinion, a reasonable and proportionate charge for the use of my office and for clerical and stenographic services is the sum of $25.00. I therefore respectfully request that a total compensation of $85.00 be allowed me in this matter, of which $60.00 are for services and $25.00 for expenses.

Mailing of Copies of This Report.

Copies of this Report have been mailed to the following:

Messrs. Mort D. & Frank Goldberg, 11 South LaSalle St., Chicago, Illinois, Attorneys for Debtor.

Messrs. Defrees, Buckingham, Jones & Hoffman, 105 South LaSalle St., Chicago, Illinois, Attorneys for Bondholders' Committee and for Trustee.

Messrs. Mayer, Meyer, Austrian & Platt, 231 South LaSalle St., Chicago, Illinois, Attorneys for Continental Illinois National Bank and Trust Company.

Vernon R. Loucks, Esq., 10 South LaSalle St., Chicago, Ill., Attorney for certain creditor.

Respectfully submitted,

Carl R. Chindblom,

Referee in Bankruptcy, as Special Master.

Dated: Chicago, Illinois, July 8, 1937.

Documents Transmitted:

1. The aforesaid claim No. 4.
2. The aforesaid claim No. 5.
3. The aforesaid "blanket objection" to certain claims.
4. Debtor's objections to Plan of Reorganization.

121 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—65811) * *

SCHEDULE OF CLAIMS AND INTERESTS OF CREDITORS AND STOCKHOLDERS OF THE DEBTOR CORPORATION FILED WITH CARL R. CHINDBLOM, REFEREE IN BANKRUPTCY, AS SPECIAL MASTER, TOGETHER WITH CONSENTS AND OBJECTION TO THE PLAN OF REORGANIZATION AND OBJECTIONS TO CERTAIN CLAIMS.

Class 1.

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, entitled to priority under Section 77B of the Bankruptcy Act, as amended.

Claim No. 11—Filed by the County Collector of Cook County, Illinois, for personal property taxes for the years

1931 to 1935 in the amount of $2,727.95. Also a contingent claim for 1936 and 1937 in the amount of $2,048.08.

(An objection was filed to this claim by Weightstill Woods, Trustee, on July 2, 1937.)

Class 2.

Claim of City National Bank and Trust Company of Chicago, as allowed in these proceedings, as Successor Trustee under the Trust Deed securing First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928, from Granada Hotel Corporation, a corporation, to Chicago Trust Company, as Trustee, for amounts due it for its own use and benefit, as established by decree of foreclosure of said Trust Deed entered December 18, 1936, in proceedings pending in the Superior Court of Cook County, Illinois in Cause Numbered 519151.

Claim No. 9—Filed by City National Bank and Trust
122 Company of Chicago, as Successor Trustee, for fees and expenses incurred in foreclosure suit as follows:

Trustee's fees	$2,560.00
Trustee's attorneys' fees	8,250.00
Stenographer's and court reporter's fees	39.90
Total	$10,849.90

Class 3.

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to First Mortgage 6% Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, except with respect to said First Mortgage 6% Real Estate Gold Bonds comprised in Class 4 hereof.

Claim No.	Name of Claimant	Amount of Claim	Acceptance of Plan	Objection to Claim
1	Maurice M. Kraft..... (Based on Bond No. D 48)	$ 500.00 prin. 60.00 int.	No	No
3	G. R. Curnock..... (Based on Bonds Nos. D265, 273, 391, 475, 476, 484, 487, 547.)	4,000.00	No	No
4	Stephen L. Ingersoll, As agent for Cordelia L. Ingersoll, as Executrix of Estate of Stephen A. Ingersoll, Deceased	28,400.00 undeposited bonds 12,000.00 deposited bonds	Yes	Objection filed by Weightstill Woods, Trustee on July 2, 1937.
	Undeposited bonds Nos. C 41/43, 176/7, 236, 262, 269, 278, D 4, 204, 283, 284, 362, 363, 439. Deposited bonds Nos. not shown, following are the Certificate of Deposit numbers: 252, 332, 373, 374, 375, 386, 406, 407, 408, 410, 409, 412, 417, 423.			
6	Reconstruction Finance Corporation.	4,900.00	Yes	Objection filed by Weightstill Woods, Trustee July 2, 1937
	Bonds Nos. M13, 14, 15, D63, 65, 239, C10, 13, 72, 139. Attached to claim.			

123

Claim No.	Name of Claimant	Amount of Claim	Acceptance of Plan	Objection to Claim
7	C. S. Tuttle, Albert J. Peterson, Lewis W. Riddle, W. G. Sturm and E. A. Kilmer, as Bondholders' Committee.	$331,600.00 (Bond Nos. not shown)	No	No
12	Harris Trust & Savings Bank... (Bonds Nos. C156/58, 201, 208, 234, 285, 392, 394, 437, 485/86, 488, 539/42, 563, 601, 606.)	8,000.00	No	No
9	City National Bank & Trust Company, as Successor Trustee.	485,500.00	No	No except as to Paragraphs 5 and 9 by Weightstill Woods, Trustee on July 2, 1937.

(This claim should be reduced pro tanto by total amount of claims based on undeposited bonds in the amount of $45,800.00 and by the Committee's claim in the amount of $331,600.00, totaling $377,400.00, making net amount of this claim, $108,100.00.)

Class 4

Holders of claims allowed in these proceedings against Granada Apartments, Inc. or its property, with respect to First Mortgage 6% Real Estate Gold Bonds secured by Turst Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, with respect to Bonds numbered M-141 to M-165, both inclusive.

Claim No.	Name of Claimant	Amount of Claim	Acceptance of Plan	Objection to Claim
4	Stephen L. Ingersoll, As agent for Cordelia L. Ingersoll, as Executrix of Estate of Stephen A. Ingersoll, Deceased. (Bonds Nos. 142 to 165, inclusive).	$24,000.00	Yes	Yes filed by Weightstill Woods, Trustee on July 2, 1937.
9	City National Bank & Trust Company, as Trustee. (Bonds Nos. 141 to 165; reduced pro tanto by amount of Claim No. 4 making net amount of this claim $1,000.00).	25,000.00	No	No

124

Class 5

Holders of claims allowed in these proceedings against Granada Apartments, Inc. or its property, with respect to Second Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee.

Claim No.	Name of Claimant	Amount of Claim	Acceptance of Plan	Objection to Claim
3	G. R. Curnock..... (Bonds Nos. 171 to 194, 117 to 120, 130 to 136, 227 to 241).	$50,000.00	No	No
4	Stephen L. Ingersoll, as Agent for Cordelia L. Ingersoll, as Executrix of Estate of Stephen A. Ingersoll, Deceased. (Bonds Nos. D4, 5, 8 to 20, M101 to 116, 123 to 127, 128, 129, 242, 243, 244 to 266, 305 to 340, 343 to 350.)	99,500.00	Yes	Objection filed by Weightstill Woods, Trustee on July 2, 1937.
6	Reconstruction Finance Corporation. (Bonds Nos. M122, 267 to 304, M167, 168, 169, 170, attached to claim).	43,000.00	Yes	Objection filed by Weightstill Woods, Trustee on July 2, 1937.
12	Harris Trust & Savings Bank... (Bonds Nos. 51 to 100).	50,000.00	No	No
13	Continental Illinois National Bank of Chicago. (Bonds Nos. 1 to 50).	50,000.00 prin. 4,500.00 int.	No	No

125

Class 6

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to Promissory Chattel Mortgage Note secured by Chattel Mortgage Dated August 23, 1933.

Claim No. 9—Filed by City National Bank of Chicago, as Trustee, for Chattel Mortgage Note in the amount of $75,000.00 August 23, 1933.

(On July 2, 1937, Weightstill Woods, Trustee, filed his objections to this part of the Trustee's claim.)

Class 7

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property with respect to the shares of Preferred Stock of Granada Apartments, Inc.

Claim No.	Name of Claimant	No. of Shares	Acceptance of Plan	Objection to Claim
2	Emil W. Christiansen and Edla Christiansen.	12 Cert. No. 7 attached	No	No
5	Stephen L. Ingersoll, as Agent for Cordelia L. Ingersoll, as Executrix of Estate of Stephen A. Ingersoll, Deceased.	501	Yes	Objection filed by Weightstill Woods, Trustee on July 2, 1937.
	(Certificates Nos. 2, 3, 6, 9, 19, 22, 23, 25, 31, 33, 34, 35, 43, 47, 50, 51, 52, 53; 54, 59, 63, 64, 65, 67.)			
10	E. W. Wenstrand, as Trustee...	1000 Cert. No. 4	No	Objection filed by Weightstill Wood as Trustee, on July 2, 1937.

126

Class 8

Holders of claims allowed in these proceedings against Granada Apartments, Inc. or its property, with respect to the Common Stock of Granada Apartments, Inc.

Claim No.	Name of Claimant	No. of Shares	Acceptance of Plan	Objection to Claim
5	Stephen L. Ingersoll, as Agent for Cordelia L. Ingersoll, as Executrix of Estate of Stephen A. Ingersoll, Deceased.	1,000. Cert. No. 4	Yes	Objection filed by Weightstill Woods, Trustee on July 2, 1937.
10	E. W. Wenstrand, Trustee.....	507	No	Objection filed by Weightstill Woods, Trustee on July 2, 1937.

Class 9

Holders of claims allowed in these proceedings against Granada Apartments, Inc. or its property, of whatever character other than as above in the foregoing Clases 1 to 8, inclusive, enumerated, whether the same be secured or unsecured or evidenced by written instrument.

Claim No.	Name of Claimant	Amount of Claim	Acceptance of Plan	Objection to Claim
4	Stephen L. Ingersoll, as Agent for Cordelia L. Ingersoll, as Executrix of Estate of Stephen A. Ingersoll, Deceased. (Based on promissory note of the debtor corporation).	$16,000.00	Yes	Filed by Weightstill Woods, as Trustee on July 2, 1937.
8	The Indemnity Insurance Company of North America. (Based on Receiver's Certificate, copy of which is shown on claim).	4,000.00	No	Objection field by Weightstill Woods, Trustee on July 2, 1937.
10	E. W. Wenstrand, as Trustee... (Based on corporation promissory note).	16,500.00	No	Objection filed by Weightstill Woods, Trustee on July 2, 1937.

127

Claim No.	Name of Claimant	Amount of Claim	Acceptance of Plan	Objection to Claim
14	Edwin Rosenberg.....	$4,630.00	No	No

(Based on judgment obtained in the Municipal Court of Chicago on March 8, 1937).

(An objection to the Plan of Reorganization was filed on June 23, 1937 by the Debtor corporation).

The following acceptances of the Plan of Reorganization were filed, but no claims:

Class 3

First Mortgage Bonds
(Unsubordinated)

Name	Bond Nos.	Amount
Adolph Gumrow.....	D79	$ 500.00
Ruth M. Neilond.....	Not shown	200.00
A. M. High, by W. R. Johnson.....	D 226	500.00
Minnie Quinn, by W. R. Johnson.....	D 84, 85	1,000.00
Louise White.....	Not shown	500.00
A. M. High.....	Not shown	500.00
Total.....		$3,200.00

Class 5

Second Mortgage Bonds

G. L. Daan, Agent.....	Not shown	7,000.00

Class 7

Preferred Stock

Tillie Roessler Kotelman.....	25 shares
Helen Zielke and Bertha Ploiger.....	20 shares
Total.....	45 shares

CERTIFIED:

Carl R. Chindblom
REFEREE IN BANKRUPTCY AS SPECIAL MASTER

128 And afterwards, to wit, on the 14th day of July, A. D. 1937, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit: Entered July 14, 1937.

129 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—65811) * *

ORDER.

This cause coming on to be heard on the allowance or disallowance of claims against Debtor and interest in its property heretofore filed herein, pursuant to Order entered herein on May 24, 1937, and upon objections to certain claims, which objections have been filed herein pursuant to the said Order, by the Trustee heretofore appointed in these proceedings and the Court being fully advised in the premises:

It Is Ordered that the objections of the said Trustee as set forth in the first paragraph thereof to claims numbered 4, 5, 6, 8, 9, 10 and 11 (said designation being the designation set forth in the report of the Special Master with respect to claims as filed pursuant to said Order entered on May 24, 1937) be, and hereby are, overruled without prejudice to the right of the said Trustee to renew said objections in the event an Order of Liquidation of the Debtor is entered in these proceedings; and.

It Is Further Ordered that the objections of the said Trustee as set forth in the second paragraph thereof to claims numbered 4, 5, 6, paragraph 9 of claim 9, and claim 10 be, and hereby are overruled without prejudice to the right of the said Trustee to renew said objections in the event an Order of Liquidation of the Debtor is entered in these proceedings; and

130 It Is Further Ordered that the hearing with respect to claim numbered 8, paragraph 5 of claim numbered 9 and claim numbered 11 and the objections of the said Trustee thereto be, and hereby is, continued to September 14, 1937, without further notice for determination thereof; and

It Is Further Ordered that the hearing with respect to the ownership of securities set forth in claims 4, 5 and 10, and supplemental proof of claim heretofore filed herein by E. W. Wenstrand, as Trustee, be and hereby is, continued, without further notice, to July 15, 1937; and

It Is Further Ordered that the following claims in the respective classes and in the respective amounts designated be, and hereby are, allowed:

(a) The following claims as class 3 claims:

1. Maurice M. Kraft in the amount of $ 500.00 plus interest
2. G. R. Curnock in the amount of 4060.00 plus interest
3. Stephen L. Ingersoll, as agent for Cordelia L. Ingersoll, as executrix of the estate of Stephen A. Ingersoll, deceased, or E. W. Wenstrand, as Trustee in the amount of 4400.00 plus interest
4. Reconstruction Finance Corporation in the amount of 4900.00
5. Harris Trust and Savings Bank in the amount of 8000.00
6. C. S. Tuttle, Albert J. Peterson, Lewis W. Riddle, W. G. Sturm and E. A. Kimmer, constituting the Bondholders Protective Committee, in the amount of 331,600.00
7. City National Bank and Trust Company of Chicago, as Successor Trustee under Trust Deed dated September 1, 1928 securing First Mortgage 6% Real Estate Gold Bonds of Debtor, in the amount of $127,600.00 plus interest,

computed as follows:

Total amount of claim	$485,500.00
Less claims allowed as hereinabove set forth in 1 to 7, inclusive, and claim hereinafter allowed as a class 9 claim of Edwin Rosenberg, based on judgment of $4500.00 principal amount of said Bonds	$357,900.00

(b) The following claims as class 4 claims:

1. Stephen L. Ingersoll, as agent for Cordelia L. Ingersoll as executrix of the estate of Stephen A. Ingersoll, deceased, or E. W. Wenstrand, as Trustee, in the amount of $ 24,000.00 plus interest.

2. City National Bank and Trust Company of Chicago as Successor Trustee under Trust Deed dated September 1, 1928, securing First Mortgage 6% Real Estate Gold Bonds of Debtor, in the amount of 1,000.00 plus interest,

computed as follows:

Total amount of claim	25,000.00
Less claim allowed in 1 above	24,000.00
Amount of Successor Trustee claim	1,000.00
	plus interest.

(c) The following claims as class 5 claims:

1. G. R. Curnock, in the amount of $50,000.00 plus interest.
2. Stephen L. Ingersoll, as agent for Cordelia L. Ingersoll as executrix of the estate of Stephen A. Ingersoll, deceased, or E. W. Wenstrand, as Trustee, in the amount of 99,500.00 plus interest.
3. Reconstruction Finance Corporation, in the amount of 43,000.00 plus interest.

132 4. Harris Trust and Savings Bank, in the amount of $ 50,000.00 plus interest

5. Continental Illinois National Bank, in the amount of 50,000.00 plus interest

(d) The following claims as class 7 claims:

1. Stephen L. Ingersoll, as agent for Cordelia L. Ingersoll, as executrix of the estate of stephen A. Ingersoll, deceased 4 shares
2. Stephen L. Ingersoll, as agent for Cordelia L. Ingersoll, as executrix of the estate of Stephen A. Ingersoll, deceased, or E. W. Wenstrand, as Trustee 497 shares
3. Emil W. Christiansen and Edla Christiansen 12 shares
4. E. W. Wenstrand 10 shares

(e) The following claim as a class 8 claim:

1. Stephen L. Ingersoll, as agent for Cordelia L. Ingersoll as executrix of the estate of Stephen A. Ingersoll, deceased, or E. W. Wenstrand, as Trustee 1000 shares

(f) The following claim as a class 9 claim:

1. Edwin Rosenberg (based on judgment with respect to First Mortgage 6% Real Estate Gold Bonds) in the amount of $ 4,630.00;

and

It Is Further Ordered that the following claims in the respective classes and for the respective amounts designated be, and hereby are, disallowed as follows:

1. The claim of Stephen L. Ingersoll, as agent for Cordelia L. Ingersoll, as executrix of the estate of Stephen A. Ingersoll, deceased, with respect to class 3 claim evidenced by Certificates of Deposit in the principal amount of $12,000.00, for the reason that said claim is a duplication of the class 3 claim filed herein by the Bondholders Protective Committee.

133 2. The claim of Stephen L. Ingersoll, as agent for Cordelia L. Ingersoll, as executrix of the estate of Stephen A. Ingersoll, deceased, with respect to class 9 claim evidenced by promissory note of the Debtor in the amount of $16,000.00

3. The claim of E. W. Wenstrand, as Trustee, with respect to class 9 claim evidenced by promissory note of Debtor in the amount of $16,500.00.

4. The claim of E. W. Wenstrand with respect to class 9 claim evidenced by promissory notes of Debtor in the amount of $26,500.00; and

It Is Further Ordered that upon the date of the entry of the final decree herein, City National Bank and Trust Company of Chicago, as Successor Trustee under the Trust Deed dated September 1, 1928, securing First Mortgage 6% Real Estate Gold Bonds of Debtor, be, and hereby is, directed to turn over to the Reorganized Company for cancellation $30,000.00 principal amount of Second Mortgage 6% Real Estate Gold Bonds of Debtor now held by it.

Enter:

Barnes,
Judge.

(July 14, 1937)

134 And afterwards, to wit, on the 12th day of July, A. D. 1937, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit: Entered July 12, 1937.

135 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—65811) * *

ORDER RE POSSESSION.

This matter coming on before the Court,

It is Ordered that further hearing on the matter of permanent possession be continued until September 15, 1937, and that Weightstill Woods continue as the Temporary Trustee under the bond heretofore given, until the further order of the Court.

Enter:

Barnes
District Judge.

136 And on, to wit, the 12th day of July, 1937, came the Protective Committee by its attorneys and filed in the Clerk's office of said Court its certain Acceptance of Plan of Reorganization in words and figures following, to wit: Filed July 12, 1937.

137 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—65811) * *

ACCEPTANCE OF PLAN OF REORGANIZATION.

The undersigned, owners and holders of $316,300 principal amount of First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928, from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, together with interest with respect thereto (said Bonds being deposited under the certain Deposit Agreement dated April 25, 1933, the depositors of which have, as in said Deposit Agreement provided, consented to the Plan of Reorgan-

ization hereinafter mentioned), do hereby accept and approve the Plan of Reorganization of Debtor dated May 1, 1937, heretofore filed in the above entitled proceedings on May 24, 1937 by the undersigned.

Dated: July 12th, 1937.

C. S. Tuttle
Albert J. Peterson
Lewis W. Riddle
W. G. Sturm
E. A. Kilmer
As members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933.

By: C. S. Tuttle
Hereunto duly authorized.

Filed July 14, 1937.

138 And afterwards, to wit, on the 14th day of July, A. D. 1937, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

139 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—65811)

ORDER CONFIRMING PLAN OF REORGANIZATION.

This cause coming on to be heard pursuant to an Order entered herein on May 24, 1937, on Petition of Charles A. Tuttle, Albert J. Peterson, Lewis W. Riddle, W. G. Sturm and E. A. Kilmer, constituting the Protective Committee (hereinafter called the "Committee"), acting under the certain Deposit Agreement dated April 25, 1933 with respect to the First Mortgage 6% Real Estate Gold Bonds of Debtor for the purposes and matters set forth in said Order entered herein on May 24, 1937, and it appearing to the Court that the said hearing has been continued from time to time to this date without further Notice, and the Court having heard the statements of counsel and being fully advised in the premises:

The Court Finds and It Is Ordered, Adjudged and Decreed as follows:

1. Notice of this hearing has been duly given to all

creditors and stockholders of Debtor and claimants against its property and all other parties in interest in accordance with the provisions of the aforesaid Order entered on May 24, 1937.

140 2. The Court has jurisdiction in these proceedings of the Debtor and of its creditors and stockholders and the claimants against the property of Debtor and all parties in interest and of the property of the Debtor and of the subject matter in these proceedings.

3. That the Committee has proposed for consideration and confirmation at a hearing duly noticed therefor the Plan of Reorganization of Debtor filed herein by the Committee pursuant to said Order entered herein on May 24, 1937.

4. That the said Plan of Reorganization be and hereby is modified and amended as follows, the said Plan of Reorganization as so amended being hereinafter called "Plan of Reorganization":

1. By striking from the first paragraph of Section B the words and figures "five (5)", and by substituting in lieu thereof the words and figures "three (3)".

2. By striking from the first paragraph of Section B the sentence reading "Two of the initial Trustees under such Trust Agreement shall be designated by the Court and three of such initial Trustees shall be designated by the Committee, subject to the approval of the Court", and by substituting in lieu thereof the following: "The initial Trustees under such Trust Agreement shall be designated by the Court."

3. By adding the following to the third paragraph of Section B: "and directors as such shall receive no compensation".

4. By adding the following at the end of the fourth paragraph of Section B: "The aggregate annual compensation of the Trustees shall not exceed one per cent (1%) of the gross annual income of the Reorganized Company, provided, however, that if the Trustees elect one

141 of their number to be managing Trustee, he may be paid and receive a further additional reasonable compensation, but such that his total compensation shall not exceed the Chicago Real Estate Board rate for like services."

5. By adding an additional paragraph to Section D as follows:

"8. Anything hereinbefore or hereinafter contained to the contrary notwithstanding all expenses of administra-

tion in this Court and in any State Courts shall be subject to the approval of this Court."

6. By inserting in Section F, after the words "(including taxes)", the following: "to provide funds for rehabilitating and/or remodeling the property of the Reorganized Company."

5. The Judge is of the opinion and the Court finds that the foregoing amendments and modifications to the Plan of Reorganization are not materially adverse to the interest of any of the creditors or stockholders of the Debtor, and no creditors or stockholders of Debtor who have heretofore filed acceptances of the Plan of Reorganization shall have the right to withdraw such acceptances by reason of said amendments and modifications.

6. That all objections heretofore filed in these proceedings to the Plan of Reorganization be, and the same hereby are, overruled.

7. The Judge is satisfied and the Court finds that

(a) The Plan of Reorganization is fair and equitable and does not discriminate unfairly in favor of any class of creditors or stockholders of Debtor and is feasible.

(b) The Plan of Reorganization complies with the applicable provisions of subdivision (b) of Section 77B of the Bankruptcy Act, as amended.

(c) The following are the only classes of creditors of Debtor whose claims have been filed herein who are affected by the Plan of Reorganization:

142 Class 3: Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, except with respect to said First Mortgage 6% Real Estate Gold Bonds comprised in Class 4 hereof.

Class 4: Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, with respect to Bonds numbered M-141 to M-165, both inclusive.

Class 5: Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to Second Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928

from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee.

Class 7: Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to the Shares of Preferred Stock of Granada Apartments, Inc.

Class 8: Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to the shares of Common Stock of Granada Apartments, Inc.

Class 9: Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property of whatever character, other than as above in the foregoing Classes enumerated, whether the same be secured or unsecured or evidenced by written instrument.

143 (d) The Plan of Reorganization has been accepted in writing by acceptances filed in these proceedings by or on behalf of creditors holding not less than two-thirds (2/3rds) in amount of claims in each class whose claims would be affected by the Plan of Reorganization and by or on behalf of the stockholders of Debtor holding a majority or more of the stock of the Debtor in each class.

(e) All amounts to be paid by the Debtor or by the Reorganized Company which is to acquire the property or assets of the Debtor pursuant to the Plan of Reorganization for services or expenses incident to the reorganization of the Debtor are to be subject, and are hereby directed to be subject to the approval of the Court.

(f) The Debtor is not a utility subject to the jurisdiction of any regulatory commission or commissions or other regulatory authority or authorities created by the laws of any State or States.

(g) The offer of the Plan of Reorganization and its acceptance are in good faith and have not been made or procured by any means or promises forbidden by the Bankruptcy Act, as amended.

(h) A reasonable time has been determined and fixed within which claims and interests of creditors and stockholders and claimants against the property of the Debtor may be filed or evidenced, and said time having expired, no claims not heretofore filed or evidenced herein may participate in the Plan of Reorganization, except on Order for cause shown.

(i) All other matters contained in the Bankruptcy Act

requisite to the submission and confirmation of a Plan of Reorganization have been complied with.

(j) Such schedules and information as are necessary to disclose the conduct of the affairs of the Debtor and the fairness of the Plan of Reorganization are a part of the records and files in these proceedings.

144 (k) The Reorganized Company issuing securities and acquiring the property of the Debtor under the Plan of Reorganization is authorized by its charter or by applicable State or Federal Laws to take all action necessary to carry out the Plan of Reorganization.

(l) There are no contracts of the Debtor which are executory in whole or in part and no unexpired leases which have been rejected or surrendered.

(m) By reason of the number of securities of the Debtor outstanding and the extent of the public dealing therein the preparation of a statement herein of what, if any, claims and shares of stock have been purchased or transferred by those accepting the Plan of Reorganization after the commencement or in contemplation of these proceedings and the circumstances of such purchases or transfer is impracticable and such statement need not be filed.

8. The Plan of Reorganization is hereby in all respects confirmed.

9. The provisions of the Plan of Reorganization and this Order shall be binding upon: (a) the Debtor, (b) all stockholders of Debtor, (c) all creditors of the Debtor and claimants against the property of the Debtor, secured or unsecured, whether or not affected by the Plan of Reorganization and whether or not their claims have been filed and, if filed, whether or not approved, including creditors who have not, as well as those who have, accepted the Plan of Reorganization.

10. The Committee shall proceed forthwith to carry out and consummate the Plan of Reorganization and the Orders of this Court relative thereto and shall in general take all steps, perform all acts and do all things necessary, convenient or advisable for the purpose of fully carrying out and effectuating the Plan of Reorganization according to its terms, but all such acts, steps and proceedings shall be taken subject to the supervision and control of this Court.

145 11. Counsel for the Committee shall forthwith proceed with the preparation of all indentures, agree-

ments, documents, participation certificates, releases, satisfactions, or other written instruments contemplated by the Plan of Reorganization or which may be necessary, convenient or advisable in connection with the consummation or execution of the Plan of Reorganization.

12. The Trustee heretofore appointed in these proceedings until such time as he shall convey, transfer and assign the property and assets of the Debtor to the Reorganized Company, and thereafter the Reorganized Company be, and hereby is, authorized and directed to pay out of funds of the Debtor then in the possession of the said Trustee, or out of the funds of the Reorganized Company as the case may be, all costs incident to the preparation and printing of any of the aforesaid instruments as set forth in paragraph 11 hereof, and any and all costs and expenses (including examination of title of the real estate of Debtor and the obtaining of a guaranty policy thereon) taxes, fees (except attorneys' fees) or expenses incurred in connection with any acts taken by the Committee and its counsel in the consummation and execution of the Plan of Reorganization.

13. Jurisdiction is hereby reserved by the Court to enter any and all further and supplementary Orders for the purpose of consummating the Plan of Reorganization and for facilitating the distribution of the Participation Certificates deliverable in accordance with the Plan of Reorganization and of dealing with the securities and interests to be surrendered by the holders thereof in accordance with the Plan of Reorganization.

146 14. (a) City National Bank and Trust Company of Chicago, an Illinois corporation, as Successor Trustee under Trust Deed dated September 1, 1928, from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, securing the First Mortgage 6% Real Estate Gold Bonds of Debtor be, and hereby is, authorized, empowered and directed upon receipt of written request from the Committee so to do, to execute, acknowledge and deliver an appropriate instrument satisfying the Decree entered December 18, 1931 in the Superior Court of Cook County, Illinois, in proceedings entitled "William A. Thuma, Complainant, *vs.* Granada Hotel Corporation, a corporation, et al., Defendants, No. 519151" and, if within five (5) days from the date of receipt of said written request from the Committee, as aforesaid, said City National Bank and Trust

Company of Chicago, as said Successor Trustee, shall fail, refuse, or neglect to execute, acknowledge or deliver such instrument of release of said Trust Deed and said satisfaction of Decree, then and in that event Carl R. Chindblom be, and hereby is, appointed Special Master herein for the purpose of executing, acknowledging and delivering said release and said satisfaction, and said Carl R. Chindblom, as Special Master be, and hereby is, authorized, empowered and directed to execute, acknowledge and deliver such instrument or instruments releasing said Trust Deed and satisfying said Decree and to do any and all acts necessary and proper in connection therewith.

(b) Charles H. Albers, Receiver of Central Republic Trust Company, as Successor Trustee under
147 Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, securing the Second Mortgage 6% Real Estate Gold Bonds of Debtor be, and hereby is, authorized, empowered and directed, upon receipt of written request from the Committee so to do, to execute, acknowledge and deliver an appropriate instrument of release of said Trust Deed and, if within five (5) days from the date of the receipt of said written request from the Committee, as aforesaid, said Charles H. Albers, as Receiver of Central Republic Trust Company, as Successor Trustee, shall fail, refuse, or neglect to execute, acknowledge or deliver such instrument of release of said Trust Deed, then and in that event Carl R. Chindblom be, and hereby is, appointed Special Master herein for the purpose of releasing said Trust Deed, and said Carl R. Chindblom, as Special Master be, and hereby is, authorized, empowered and directed to execute, acknowledge and deliver an appropriate instrument releasing said Trust Deed and to do any and all acts necessary and proper in connection therewith.

(c) Upon and subject to the execption and completion of the foregoing matters contained in sections (a) and (b) preceding, all liability and indebtedness of Debtor with respect to said First Mortgage 6% Real Estate Gold Bonds and said Second Mortgage 6% Real Estate Gold Bonds shall be cancelled and extinguished and all deeds, conveyances, chattel mortgages or assignments of whatsoever character given at any time and conveying or intending to convey any property of the Debtor as security

under said respective Trust Deeds securing said respective Bonds, and any and all judgments, liens or claims for liens against the Debtor or its property with respect thereto shall be deemed satisfied, released, discharged, cancelled and extinguished.

148 15. The property and assets of Debtor to be conveyed, transferred and assigned to the Reorganized Company, when so conveyed, transferred and assigned shall be free and clear of all claims against the Debtor and its property and of its stockholders and creditors, save and except that the Reorganized Company shall be liable for and shall be obligated to pay all claims which, under the terms of the Plan of Reorganization, are to be assumed or paid by the Reorganized Company, including all costs of administration and other allowances made or approved by the Court and all amounts to be paid pursuant to the provisions of this Order.

16. Until the entry of the final decree herein all creditors and stockholders of the Debtor and claimants against the property and assets of the Debtor and all other persons, including sheriffs, marshals and other officers and deputies and any attorneys and agents of any of the foregoing be, and hereby are, enjoined and restrained from instituting, prosecuting or continuing any pending or subsequent suit at law or in equity in any Court whatsoever against the Debtor or the property and assets of the Debtor or against the Reorganized Company or the property and assets of the Reorganized Company, and from taking possession of or in any way interfering with the property and assets of the Debtor or with the property and assets of the Reorganized Company.

17. Attorneys, agents, committees, or other parties in interest may file their applications for compensation for services rendered and to be rendered and for reimbursement for actual and necessary expenses incurred or to be incurred in connection with these proceedings and the Plan of Reorganization with the Clerk of this Court on or before September 14, 1937.

149 18. For the determination of all other matters germane to these proceedings not heretofore determined and for the purpose of hearing and considering applications for fees and expenses and for the determination and allowance of fees and expenses and for the purpose of making such further Orders as the Court may deem proper with respect to the consummation of the Plan of Reorganization

and for the entry of a final decree herein, this hearing be, and hereby is, continued to September 14, 1937, at 10:00 o'clock A. M. without further notice, and the Court hereby expressly reserves jurisdiction of all and such matters for such determination as the Court may hereafter deem proper.

Anything herein contained to the contrary notwithstanding, all expenses of administration in this and any other Court shall be subject to the approval of this Court.

Enter:

Barnes,
Judge.

(July 14, 1937)

Entered July 15, 1937.

150 And afterwards, to wit, on the 15th day of July, A. D. 1937, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

151 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—65811.)

ORDER.

This matter coming on to be heard on Motion of the Protective Committee, and the Court being fully advised in the premises;

It Is Ordered that the Order Confirming the Plan of Reorganization of Debtor heretofore entered in these proceedings be, and hereby is, amended by inserting in line 6 of subparagraph (h) on page 5 thereof, immediately preceding the word "claims", the word "no".

Enter:

Barnes,
Judge.

(July 15, 1937.)

157 And afterwards, to wit, on the 30th day of August, A. D. 1937, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan, District Judge, appears the following entry, to wit:

158 IN THE DISTRICT COURT OF THE UNITED STATES. Entered Aug. 30, 1937.

(Caption—65811.)

ORDER.

This matter coming on to be heard on motion of City National Bank and Trust Company of Chicago, as Trustee, and on due notice to all parties of record;

It Is Ordered that leave be, and it is hereby, given City National Bank and Trust Company of Chicago to file instanter its report and account.

It Is Further Ordered that all parties in interest file objections, if any, thereto within ten (10) days and that the hearing on said account and objections, if any, be and it is hereby set for September 15, 1937 before the Honorable John P. Barnes.

Enter:

Philip L. Sullivan,
Judge.

Dated August 30, 1937.

159 And on, to wit, the 30th day of August, 1937, came the City Natl. Bank & Trust Co. of Chicago, Trustee, by its attorneys and filed in the Clerk's office of said Court its certain Report and Account in words and figures following, to wit: Filed Aug. 30, 1937.

160 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—65811)

REPORT AND ACCOUNT OF CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE.

Your petitioner, City National Bank and Trust Company of Chicago, a corporation, respectfully represents:

1. That it is a national banking association organized under the laws of the United States duly authorized and empowered to accept and to execute trusts and to conduct a Trust business within the State of Illinois.

2. That by reason of the premises hereinafter set forth it is, and for a long time prior to the filing of the petition in bankruptcy herein was, Successor Trustee under trust

deed recorded in the Recorder's Office of Cook County, Illinois, as Document 10161996.

3. That the said trust deed was made by Granada Hotel Corporation, dated September 1, 1928 and recorded October 1, 1928, and was, together with a supplemental trust deed likewise made by Granada Hotel Corporation dated September 1, 1928 and recorded October 1, 1928 as Document 10161997, given to Chicago Trust Company, as Trustee, to secure the payment of the first mortgage bonds, coupons and indebtedness involved in this proceeding.

4. That thereafter on the 25th day of July, 1931, Chicago Trust Company consolidated with Central Trust Company of Illinois under the statutes of the State of Illinois to form Central Republic Bank and Trust Company, which later changed its name to Central Republic Trust Company.

5. That on August 7, 1933, defaults having been made by Granada Hotel Corporation and its successor in title, Granada Apartments, Inc., in the performance of certain of the covenants and conditions of the said trust and supplemental trust deeds, Central Republic Trust Company, your petitioner's predecessor in trust, filed its cross-bill of complaint to foreclose the said trust and supplemental trust deeds in proceedings then pending in the Superior Court of Cook County, Illinois, as Cause No. 519151, wherein William A. Thuma was plaintiff and Granada Apartments, Inc., a corporation, and others were defendants, in which said proceedings Chicago Title and Trust Company, a corporation, had been appointed and was acting as Receiver for the real estate and premises described in said trust deed and the rents, issues, income and profits thereof; that upon the filing of said cross-bill of complaint on, to wit, the 7th day of August, 1933, Central Republic Trust Company procured in said proceedings the entry of an order extending the said receivership fully to protect its interests as such cross-complainant, and later, on March 22, 1934, by stipulation of all parties in interest, including Granada Apartments, Inc., procured an order directing the said receiver forthwith to surrender to it as Trustee possession of the said premises and requiring said receiver thereafter to file its final report and account upon the coming in and approval of which said account the said receiver was directed to turn over to Central Republic Trust Company the funds and securities in its possession after deduction of such fees and charges as might be allowed by the court, Central Republic Trust Company, as Trustee, being expressly ordered to assume payment of the

receiver's certificate of indebtedness theretofore issued in said proceeding to Indemnity Insurance Company of North America.

6. That pursuant thereto Central Republic Trust Company did on or about the 22nd day of March, 1934 enter into possession of the said premises and thereafter operated the said premises until January 4, 1935.

7. That on the 20th day of November, 1934 William L. O'Connell was appointed receiver of Central Republic Trust Company by Edward J. Barrett as Auditor of Public Accounts of the State of Illinois, and continued to act as such receiver until the date of his death, at which time Charles H. Albers was appointed and is now the duly qualified and acting receiver of Central Republic Trust Company; that the said William L. O'Connell, as such receiver, duly resigned the trusteeship under said trust deed and supplemental trust deed, and Chicago Title and Trust Company, a corporation, named as successor trustee in the indenture in the event of such resignation, filed in said foreclosure proceedings its written refusal to act as successor trustee; that thereupon on, to wit, the 3rd day of January, 1935, your petitioner, City National Bank and Trust Company of Chicago, was appointed successor trustee under said trust deed by the Superior Court of Cook County, Illinois, in said foreclosure proceedings, and it accepted said appointment and on the 3rd day of January, 1935 took possession of the said mortgaged real estate and premises, together with all of the personal property located therein, and William L. O'Connell, as receiver of Central Republic Trust Company, was ordered to file the final report and account of Central Republic Trust Company in said foreclosure proceedings.

8. That thereafter William L. O'Connell, as receiver of Central Republic Trust Company filed the final report and account of Central Republic Trust Company in said foreclosure proceedings, and on the 11th day of February, 1935, by order of said court, the said final report and account was approved and said William L. O'Connell as such receiver was authorized and directed to pay to Igoe and Flaherty, his attorneys, the sum of One Hundred Fifty Dollars ($150) and to pay the balance of the funds in his possession to your petitioner as successor trustee and to deliver to your petitioner the chattel mortgage note in the sum of Seventy-five Thousand Dollars ($75,000) and the chattel mortgage securing the same, recorded in the Recorder's Office of Cook County, Illinois as Document

B-2702627, together with certain second mortgage bonds of Granada Hotel Corporation in the principal sum of Thirty Thousand Dollars ($30,000), upon which payment and delivery it was directed that the said receiver and Central Republic Trust Company be forever discharged from any and all liability under and in connection with said trust indentures or the administration of said trust, and that the said funds, documents, and bonds were so paid and delivered by the receiver to your petitioner, City National Bank and Trust Company of Chicago, as successor trustee,
162 by reason of which there was transferred to your petitioner as successor trustee in possession of said real estate and premises the sum of Nine Thousand Nine Hundred Ninety-five Dollars and Forty-six Cents ($9,995.46).

9. That such further proceedings were had in the said foreclosure case that your petitioner City National Bank and Trust Company of Chicago, as such successor trustee, was substituted as complainant therein, and on February 18, 1935 filed its supplemental bill of complaint, and the cause was referred to Robert C. O'Connell, a Master in Chancery of the said court, who, on due notice to all parties in interest, took the proofs and filed his report in writing in the said cause, which said report was by order of the said Superior Court duly approved and the fees and charges of the said Master in Chancery were fixed and taxed as costs in said proceeding, following which and on the 18th day of December, 1936 a decree of sale was entered in the said cause finding the amounts due your petitioner, City National Bank and Trust Company, for its own benefit and for the benefit of all of the holders of unpaid bonds and coupons secured by and outstanding under said trust and supplemental trust deeds and secured also by the chattel mortgage involved in this proceeding, which said decree also found, among other things, the amount due on the said receiver's certificate of indebtedness assumed by your petitioner pursuant to court order as aforesaid, and fixed the relative priority of the liens securing the several sums respectively found due the various parties.

10. That in and by its supplemental complaint so filed in said foreclosure proceedings City National Bank and Trust Company of Chicago sought, among other things, an accounting and statement of the amounts due it from Granada Hotel Corporation and Granada Apartments, Inc., and an accounting as to the precise amount due it under its said trust deed, and that upon the hearings of the said cause your petitioner accounted to the defendants for

all rents, issues, income and profits collected and disbursed by it for the period commencing January 3, 1935 and ending September 30, 1936, and showed that the balance in its possession as of September 30, 1936 was One Thousand Six Hundred Eighty Dollars and Fifty-six Cents ($1,608.56), which in and by said decree of sale was applied on the indebtedness found due City National Bank and Trust Company of Chicago, as Trustee aforesaid, by reason of which your petitioner represents that it has fully accounted for the period ending September 30, 1936 in the general accounting had between the parties to said foreclosure action, but further represents to the court that the chancellor in said foreclosure proceedings in and by said decree expressly indicate that by the entry thereof he did not purport to approve any account of your petitioner as successor trustee in possession of the said premises; and your petitioner represents that it held such possession not as an officer of the Superior Court of Cook County, Illinois and not by virtue of any order thereof, but as a matter of right and as mortgagee in possession of the said real estate and premises after condition broken, by reason of which its accounting might not have been properly presented to the court for approval but might be had only by way of accounting between the parties to the action.

163 11. That from the 3rd day of January, 1935 to the 17th day of May, 1937, it continuously possessed and operated the mortgaged property and collected the rents, issues, income, and profits thereof; that on the 17th day of May, A. D. 1937 it surrendered possession thereof to Weightstill Woods, Trustee in Bankruptcy herein. That during the period of its operation it retained Barrow, Wade, Guthrie & Company, accountants and auditors of Chicago, Illinois, to audit all receipts and disbursements and supply monthly statements in respect thereof, and that such statements have been furnished to your petitioner by said accountants for each and every the months of its possession, which said statements were consolidated by Barrow, Wade, Guthrie & Company in the summary analysis of cash accounts hereto attached marked Exhibit A and made a part hereof; that all of the disbursements made by your petitioner as Trustee are supported by vouchers which are available for inspection by any party in interest but which your petitioner avers are so voluminous as to render it impracticable to exhibit them forthwith; that the said monthly audits are likewise available for the inspection of the Trustee in Bankruptcy herein and his auditors.

12. That in and by your petitioner's said trust deed it is, among other things, provided

"The Trustee in possession of the mortgaged premises under the provisions of Section 2 hereof is hereby authorized to use, operate, lease and manage the same by such agents as Trustee may select and to apply the rents, issues, earnings, income and profits of and from the mortgaged premises (1) to the expense of operating the mortgaged premises, including the reasonable compensation of Trustee and its agents; (2) to the maintenance of insurance, the payment of taxes, assessments and other governmental charges, the payment of mechanics and materialmen's liens or other liens prior to or coordinate with the lien of this trust deed, to the putting or maintenance of improvements on the mortgaged premises in tenantable and usable condition and/or to such other like or unlike purposes as Trustee may in its discretion deem advisable for the preservation of the security afforded thereby; (3) to the payment of interest secured hereby then due and unpaid, pro rata in the direct order of maturity thereof, with interest thereon at the rate of 7% per annum; and, last, to the payment of principal amount then due, whether by lapse of time or declaration, pro rata, without respect of differences in maturity thereof, with interest thereon at the rate of 7% per annum, but always subject to the provisions of Sections 6, 7 and 8 of Article III hereof."

13. That the operation of the mortgaged premises by the receiver in the state court foreclosure proceedings was subject to the reasonable charges of the receiver and its counsel, which in the aggregate did necessarily exceed the expense of operation by the trustee in possession.

164 Accordingly, your petitioner's predecessor in trust, to obtain management inherently more economical, determined to take possession of the mortgaged property and to operate it, and to procure such possession without prolonged litigation and the delay and expense incident thereto it negotiated and procured the stipulation of all of the parties as aforesaid, but only on condition that Cody Trust Company, which had underwritten three-fifths of the issue, might designate an independent person not associated with that Company nor with the Trustee to act as agent of the Trustee and to keep Cody Trust Company informed as to the status from time to time. As a consequence your petitioner's predecessor in trust retained Edward Hall as agent to assist it in and about the operation of said premises at an agreed compensation of Fifty Dollars ($50.00) per

month, and the said Edward Hall during all of the period of trustee operation acted as such agent.

14. Your petitioner further represents that the furniture, furnishings and equipment originally placed in the improvement on said premises were not paid for out of the proceeds of the said first mortgage loan and that to secure the unpaid purchase price thereof Albert Pick & Company took a chattel mortgage thereon, and that default having been made under the said mortgage it brought its action to foreclose the same in the Circuit Court of Cook County, Illinois in proceedings which progressed to a decree of sale, by virtue of which the furniture and furnishings were sold and purchased by International and Industrial Securities Corporation, the successor to Albert Pick & Company, but only after litigation in respect thereof had been carried without effect to the United States Supreme Court. During such litigation Cody Trust Company caused the premises to be refurnished, the unpaid portion of the purchase price being secured by the conditional sales contract now held by the Continental Illinois National Bank and Trust Company of Chicago, as set forth in the Plan herein; that at the time that the purchaser at said chattel mortgage foreclosure sale was permitted to remove the furniture and furnishings from said premises the court in the foreclosure proceedings aforesaid reserved jurisdiction to determine whether the ozite, carpets, in-a-door beds, china and kitchen cases were fixtures and part of the security intended to be effected by your petitioner's trust deeds or whether they were removal personalty, subject to the Pick chattel mortgage aforesaid. That your petitioner's predecessors in trust litigated this question in the foreclosure proceedings and in the Appellate Court, and by way of petition for certiorari to the Supreme Court of Illinois, but that it was held that those items were not fixtures but were a part of the security intended to be given by the Pick Chattel mortgage. During all of the time of this litigation the earnings of the property were insufficient to provide a fund sufficient to purchase items in replacement of these or with which to settle the claim of the purchaser at the Pick Chattel mortgage foreclosure sale. Moreover your petitioner represents that the removal of the items in controversy would have rendered the premises untenantable and would have materially injured the building itself. At the conclusion of that litigation, however, your petitioner's predecessor in trust was able

to effect a settlement between the purchaser and the state court receiver, through which the purchaser was paid in cash, partly through funds then in the hands of the receiver and partly through funds provided by the re-
165 ceiver under court order on security of the said receiver's certificate of indebtedness which your petitioner's predecessor in trust was directed to assume as aforesaid.

15. At the same time your petitioner's predecessor in trust succeeded in obtaining from all parties in interest the chattel mortgage and note mentioned in the plan herein, which for the first time gave the bondholders a lien on the furniture, furnishings and equipment as additional security for the payment of their bonds, such lien of course being subject to the receiver's certificate of indebtedness and to the conditional sales contract held by the Continental Illinois National Bank and Trust Company of Chicago as aforesaid.

16. That your petitioner maintains as part of its Trust Department a management division which in this case and in the case of other hotel properties directly operates through its own officers and employees; that upon taking possession your petitioner set up books of account to show all receipts and disbursements, the operating books themselves having been maintained at the hotel premises by your petitioner's employees, the net revenue for each month being transmitted to your petitioner's Trust Department where it was carried in its trustee in possession account, from which disbursements, for the most part non-operating disbursements, were made.

17. At the time your petitioner's predecessor in trust took possession of said premises the general taxes and special assessments unpaid were as follows:

1928	Cody Trust holds Sales Certificates for	$ 9,041.86
1929		9,764.15
1930		8,450.11
1931		10,431.38
1932		8,153.84
	Special Assessment due 1931— Withdrawn for	148.75
		$45,990.09,

exclusive of interest and penalties. During the time of the trustee in possession management, the following payments were made on account of taxes, to wit:

Tax	Principal	Interest	Total Paid
1929 — 9-24-34	$ 2,488.79	$ 511.21	$ 3,000.00
1929 — 11- 5-34	1,000.00		1,000.00
1929 — 3-20-35	767.78	180.43	948.21
1929 — 4-26-35	617.77	148.27	766.04
1929 — 5-28-35	617.77	151.35	769.12
1929 — 6-24-35	250.83	62.71	313.54
1933 — 7-29-35	1,417.63	85.65	1,503.28
1933 — 8-19-35	192.25	15.38	207.63
1929 — 9-24-35	942.49	249.76	1,192.25
1929 — 10-28-35	1,724.97	465.74	2,190.71
1929 — 11-27-35	1,086.42	298.77	1,385.19
1929 — 1- 6-36	8.38	2.35	10.73
1930 — 1- 6-36	1,149.67	247.18	1,396.85
1930 — 2- 6-36	1,239.66	272.73	1,512.39
1930 — 3- 6-36	218.17	49.20	267.37
166 1929 — 3- 6-36	—Int. made on payment made 11/5/34—	210.00	210.00
1930 — 3-31-36	$ 744.83	171.32	916.15
1930 — 5-27-36	956.76	229.62	1,186.38
1930 — 6- 9-36	347.52	85.12	432.64
1930 — 6-30-36	987.46	241.93	1,229.39
1930 — 7-27-36	1,356.24	339.06	1,695.30
1930 — 8-22-36	891.47	227.33	1,118.80
1931 — 8-22-36	492.00	101.34	593.34
1931 — 9- 8-36	577.09	132.73	709.82
1931 — 11- 5-36	1,632.10	350.90	1,983.00
1931 — 12- 1-36	700.00	154.00	854.00
1931 — 1- 2-37	1,041.86	234.42	1,276.28
1931 — 2- 5 37	833.58	175.05	1,008.63
1931 — 2- 5-37	235.93	55.44	291.37
1931 — 2-20-37	536.71	126.13	662.84
1931 — 2-20-37	278.64	58.52	337.16
1931 — 4-20-37	819.67	180.33	1,000.00
1932 — 5-11-37	843.88	157.12	1,001.00
Total Payments	$26,998.32	$5,971.09	$32,969.41,

leaving tax balances as of May 17, 1937 as follows:

1928 Cody Trust holds Sale Certificate for	$ 9,041.86
1929 Paid in full	.....
1930 Paid in full	.....
1931 Balance open	2,747.09
1932 Balance open	6,752.78
1933 Balance open	5,016.41
1934 Unpaid in full	7,400.38
1935 Unpaid in full	8,406.82
	$39,365.34
Special Assessment, due 1931—Withdrawn	148.75
	$39,514.09

That there has been delivered to the Trustee in Bankruptcy herein the receipted tax bills evidencing the payments made by your petitioner's predecessor in trust, and that your petitioner has delivered to the said Trustee the receipted tax bills evidencing the payments made by it.

18. That it is noted above that Cody Trust Company holds a tax certificate evidencing sale on account of the 1928 general taxes; that your petitioner had occasion to investigate the situation in respect of this item and finds, first, that Cody Trust Company was under obligation to pay the 1928 taxes upon receipt of bills therefor and is not entitled in its opinion to hold and to assert as a lien the certificate on account of the sale thereof; Second, that the said certificate was pledged by Cody Trust Company with the Chicago Bank of Commerce, now in receivership; third, that the said certificate does not show as an objection upon the letter of opinion of the Chicago Title and Trust Company obtained this year; and, fourth, that no claim has been filed by anyone on account of said certificate or said tax.

167 19. That your petitioner retained Eugene and Max Fuhrer to make surveys in respect of the unpaid taxes, the propriety of the assessment, and to attend to objections and reductions with respect thereof, and that the said Eugene and Max Fuhrer performed such services and rendered bills, which were paid by your petitioner as set forth in its account, the vouchers in each instance having likewise been delivered to the Trustee in Bankruptcy herein.

20. That out of the trustee in possession funds your petitioner likewise made payments to the Continental Il-

linois National Bank and Trust Company of Chicago in reduction of the amount due on its conditional sales contract aforesaid, and also made various payments on account of the receiver's certificate of indebtedness, the vouchers for which have likewise been delivered by it to the Trustee in Bankruptcy herein.

21. That prior to the filing of the petitions herein involuntary petitions under 77B were filed at Danville, Illinois against Granada Hotel Corporation and Granada Apartments, Inc. In the former case, over the objection of your petitioner that the proceeding was not predicated upon any act of bankruptcy or the existence of any equity receivership or on the consent of the debtor Company, the court approved the petition and sought to appoint a trustee to take possession of the premises from your petitioner; that your petitioner questioned the jurisdiction of the court, appealed to the Circuit Court of Appeals for this Circuit, and from its adverse opinion by way of certiorari to the Supreme Court of the United States, where is objections to the jurisdiction were upheld, with the result that the said invalid proceeding was dismissed, as was the companion case brought with the same defects against Granada Apartments, Inc., and your petitioner represents that the court in said proceedings was wholly without jurisdiction and that no marketable or merchantable or valid title could be obtained, in its opinion and that of its counsel, through any proceedings had therein, and further represents that it would have been impossible to obtain any policy guaranteeing the validity of such proceedings. That in connection with the said bankruptcy proceedings your petitioner retained counsel, became liable to pay its reasonable charges and also the expenses incurred by it, which in the aggregate amounted to Three Thousand Eight Hundred Fifty-seven Dollars and Seventy-nine Cents ($3,857.79), which it disbursed as shown in its report, voucher for which has likewise been delivered to the Trustee in Bankruptcy herein.

22. That by order of court entered in the foreclosure proceedings as aforesaid your petitioner paid the fees of Igoe and Flaherty in the sum of One Hundred Fifty Dollars ($150) and also paid the fees of the Master in Chancery incurred by it in the foreclosure proceedings taxed as costs, as aforesaid, voucher for which has likewise been delivered to the Trustee herein.

23. That during the period of its operation your petitioner has made a charge of not more than four per cent

(4%) of the gross cash receipts of and from said premises, inclusive of the agency fee paid to Edward Hall as aforesaid, which charge it represents to be well within the rate recommended in such cases by the Chicago Real Estate Board.

168 24. That in the operation of this and other hotel properties bills are incurred each month which are not paid until the following month, so that at the time of the appointment of the Trustee in Bankruptcy herein and at the time of the surrender of possession to him by your petitioner there were numerous bills unpaid, all of which were properly incurred and are charges against the trust estate. With the consent of the Trustee in Bankruptcy herein your petitioner paid certain of the said bills out of funds in its possession, and on May 25, 1937 turned over to the Trustee in Bankruptcy the sum of Seven Hundred Seventy-three Dollars and Forty Cents ($773.40), representing the balance of cash then on hand, but your petitioner avers that there were other bills which as of May 25, 1937 had not as yet been obtained and which are as follows:

		Still Unpaid	Paid by Federal Trustee—Check No. and Date
Commonwealth Edison Co.	*$270.24	$270.24	
Barrow, Wade, Guthrie Co.	135.00	135.00	
Lumbermen's Mutual Casualty Co. Insurance—O. L. & T. and Elevator	212.53	212.53	
Workmen's Compensation	80.72	80.72	
Joyce & Co., Inc.—Insurance-Fidelity Bond	2.37	2.37	
City of Chicago—Bureau of Water*	137.07	137.07	
Illinois Bell Telephone Co.	193.25		Included in Check #53—6/12/37
Payroll—May 16th and May 17th.	123.31		Included in Checks—6/1/37
Old Age Benefit Tax	1.21	1.21	
Topics—Printing	50.00		Check #49—6/12/37
Peoples Gas Light & Coke Co.*	48.21	48.21	
Guests' Valet	42.81		Included in Check #41—6/12/37
Newspapers	24.04		Included in Check #48—6/12/37
Guests' Laundry	17.67		Included in Check #45—6/12/37
Rubbish Removal	5.48		Included in Check #47—6/12/37
Hardware	5.08		Included in Check #50—6/12/37
Brink's, Inc.	4.50	4.50	
Kane Service	1.64		Included in Check #46—6/12/37
Goldstein & Company	50.00	50.00	
	$1405.13	941.85;	

*These accounts so marked are listed with discounts deducted, and such discounts may not be allowed. See invoices for discounts.

but which your petitioner is without funds in the trust estate to pay and which should be assumed and paid
169 by the Trustee in Bankruptcy herein, including its management fee for the period from May 1, 1937 to May 17, 1937 amounting to Two Hundred Fifteen Dollars and Ninety-six Cents ($215.96) (including the charge of its agent, Edward Hall, for such period), for which amount it drew its check shown in its account herein, but the said check has not been released by the Trustee in Bankruptcy.

25. Because of the amounts required to be paid on account of the furniture and equipment, the amount due on account of unpaid taxes could not be reduced as fast as otherwise would have been the case; that from time to time the County Treasurer brought proceedings for the appointment of a tax receiver for the said premises, and in such proceedings your petitioner was compelled to, and did, enter into arrangements to apply substantially all of the net income on account of unpaid taxes, payments on such account having been made down through the month of May, 1937, the last payment made on account having been more than sufficient fully to pay the bills which your petitioner now asks that the Trustee be required to assume. The payments stopped interest and penalties and were essential to prevent the appointment of a tax receiver down to the time that the Trustee herein was appointed.

26. That your petitioner in its foreclosure proceedings aforesaid made every effort to reach a conclusion beneficial to the bondholders, but that due to the income situation which prevailed until recently due to a low deposit of bonds with the bondholders' committee and due to the amounts outstanding on account of taxes, furniture, and equipment and to the holding of the Supreme Court of Illinois that the Trustee was not entitled to bid in the premises for the benefit of all of the bondholders, it was not possible to effect a reorganization and to go to sale in the said foreclosure proceedings or for your petitioner to bid in for them. Your petitioner's remedies under the law of Illinois, however, include the separate and concurrent remedies of foreclosure and of mortgagee in possession, and your petitioner avers that under the law of Illinois a mortgagee without any foreclosure proceedings whatsoever may continue in possession and collect the income, and continue to do so until its debt is paid regardless of how long that may take, and that the sole remedy of the owner of the property is by way of a proceeding in

equity to redeem, in which proceeding on tender and payment of the amount due the lien may be discharged and the trustee removed from possession. Your petitioner invoked all available remedies and faithfully and competently managed and operated the mortgaged property and collected the rents, issues, income and profits thereof, and during the period of its operation very substantially reduced, as shown by its report, the charges against said property secured by liens prior to the lien of the bondholders.

27. That the property involved in these proceedings is equipped with a heating and refrigeration plant which services not only the Granada but also two other properties, namely, the Arlington Hotel and the Lincoln Park Manor; that long prior to any default under the trust deeds on the Arlington and Granada properties the owner corporations entered into an agreement under which the Granada undertook to furnish the Arlington heat, water, hot water, and refrigeration for the sum of Nine Hundred Ten Dollars ($910) per month. In December
170 of 1933, prior to the time that Central Republic Trust Company took possession of the Granada property, Granada Apartments, Inc., and Central Republic Trust Company, as trustee in possession of the Arlington, entered into a new agreement by which the Granada would furnish such service to the Arlington for Six Hundred Dollars ($600) per month. When your petitioner's predecessor in trust took possession of the Granada it followed this agreement and accepted $600 per month for such service rendered to the Arlington. Its election so to do was predicated on a survey of the cost of such service made both by its own and independent engineers, and your petitioner avers that the sum of $600 per month obtained by it from the Arlington property by reason of such services was not only a fair and reasonable charge therefor but represented and represents a profit to the Granada property.

28. The Trustee in Bankruptcy herein asserts the fair value of such service to the Arlington to be One Thousand Dollars ($1,000) per month. Your petitioner avers that during these summer months the Granada is furnishing no heat to the Arlington and that the sum of $600 per month represents a profit to the Granada; moreover, that the refrigeration plant has become obsolete and ineffective and a deterrent to the procuring of maximum occupancy and rentals. More than a year and a half ago various

units of refrigeration at the Arlington were replaced with individual units, and the Arlington is now installing individual units throughout.

29. That at the time that your petitioner took possession of the Granada there was a valet shop in the basement of the Granada, being maintained for the convenience of Granada tenants. The Arlington had been sending work to the Granada valet shop, which increased the volume for the operator thereof, who paid to the Arlington a commission for the work sent. The valet was not occupying space in the Arlington and the Arlington was at liberty to send its work wherever it pleased, and if it had done so it would have gotten the same or a better commission, but as a matter of convenience to the Granada it continued to send its work to the Granada valet. Recently that practice has been discontinued.

30. The Granada Hotel contains extensive non-revenue producing space on the ground or street floor. Your petitioner represents to the Court, first, that the zoning ordinances of the City of Chicago applicable to the Granada property prevent the effective use of the space for commercial purposes either by your petitioner or by the Trustee in Bankruptcy or any new company; second, aside from the zoning ordinances, to remodel for commercial use entails an improvement which a mortgagee in possession under the laws of the State of Illinois (or a trustee in bankruptcy) is not entitled to make; third, remodeling for commercial use would have entailed, and would now entail, heavy expense beyond the present ability of the estate to provide; and, fourth, the neighborhood is such that, even in the absence of a restrictive or prohibitive zoning ordinance, the space if remodeled for commercial use cannot reasonably be expected to produce a revenue which would either justify the work or would permit operation profitable to tenants.

171 31. That in addition to the funds hereinbefore mentioned, your petitioner holds the following funds in the following accounts which it is prepared to disburse on court order:

$36.00 covering September 1, 1931 maturity for interest coupons;

$27.68 in an excess tax account;

$4.78 on deposit in an accrued interest account, representing accrued interest on bonds which matured March 1, 1931 and which bonds were paid on March 24, 1931.

Wherefore, your petitioner asks that this its report and account be approved and that the Trustee in Bankruptcy herein be directed to assume and forthwith to pay the unpaid bills and charges aforesaid.

City National Bank and Trust Company of Chicago, as Trustee,
By John J. Bickel, Jr.,
Assistant Trust Officer.

172 State of Illinois, } ss.
County of Cook. }

John J. Bickel, being first duly sworn on oath, deposes and says that he is Assistant Trust Officer of City National Bank and Trust Company of Chicago; that he has read the above and foregoing petition and report by it subscribed, knows the contents thereof, and that the same is true.

John J. Bickel.

Subscribed and sworn to before me this 30th day of August, A. D. 1937.

Berthel W. Peterson,
(Seal) *Notary Public.*

(Exhibit A hereto attached not copied.)

Filed Sept. 9, 1937.

173 And on, to wit, the 9th day of September, 1937, came Weightstill Woods, as Trustee and filed in the Clerk's Office of said Court his certain Answer and Counterclaim and Objections in words and figures following, to wit:

174 In the District Court of the United States.

* * (Caption—65811) * *

Answer and Counterclaim by Federal Trustee to petition filed August 30, 1937, by City National Bank and Trust Company for approval of accounts; and objections by Federal Trustee to claims by City National and its counsel, for fees and expenses, in Superior Court and in this Court.

Weightstill Woods,
Federal Trustee,
Pro se.

175 IN THE DISTRICT COURT OF THE UNITED STATES
* * (Caption—65811) * *

SUGGESTIONS BY FEDERAL TRUSTEE TO SURCHARGE AND FALSIFY ACCOUNTS AND TO DENY ALL CLAIMS BY CITY NATIONAL BANK AND TRUST COMPANY, ITS COMMITTEE AND THEIR COUNSEL; AND PETITION BY FEDERAL TRUSTEE FOR GENERAL RELIEF AGAINST RESPONDENTS HEREIN NAMED.

As Objector and Counterclaimant your federal trustee says:

A. Weightstill Woods by order of this Court entered May 17, 1937, was appointed and now remains the duly qualified and acting federal trustee for estate of debtor in these proceedings.

B. This Court by order July 14th, confirmed a plan of reorganization for the property and affairs of debtor; and by orders July 14th, 15th, 17th and August 30th, has reserved full power and jurisdiction to hear and determine all matters herewith presented.

C. Your federal trustee has filed in this Court on June 23rd his general objections in writing. He now enlarges said objections by special matter; and makes counterclaim to surcharge and falsify certain items in account of City National Bank and Trust Company, and to recover moneys due, from the respondents herein mentioned, to estate of debtor as follows:

Facts to Sustain Denial of Claims Made Herein by City National, Its Committee and Its Counsel.

D. By claim 9 herein, at paragraph 5, City National and its counsel claim fees and expenses under decree December 18, 1936, in case 519151 Superior Court of Cook County.

State Court cannot determine an allowance for this Court. Paramount law which is effective here, supersedes whatever was done in that Court. Also said Superior Court decree is void because City National and its counsel there sought to serve conflicting interests and to act in opposite capacities. Also void because Granada Hotel Corporation was dissolved by decree of Superior

Court at suit of Attorney General May 7, 1930, in case 50985, more than two years before said cross-complaint for foreclosure was filed on August 11, 1933, in said case 519151 Superior Court. Also City National, because it was in possession as a volunteer trustee as owner, cannot charge for any services by itself or counsel. All their acts merely postponed the proceedings in this Court. Said services were a surplusage and have no value to debtor estate. Also said Superior Court decree nowhere says that any sum for any purpose was due to anyone, from debtor now at bar. Also Superior Court decree concludes as follows:

"That as of September 30, 1936, the said cross-complainant (City National) represents it has on hand a balance of $1,608.56, which sum should be applied on the indebtedness found due in this decree in the above mentioned order of preference and priority * * *.

"The Court by the entry of this decree does not approve the accounts of the trustee in possession (City National) of the premises involved herein."

The language in italics was written with a pen by the Superior Court Judge. The proceedings in Superior Court do not aid or sustain any claim by the respondents here.

Additional Facts to Sustain Counterclaim by Debtor Estate.

E. City National management of Granada property lacked reasonable skill and ordinary diligence. The incinerator was not kept in repair; whereby its interior crumbled so that the heat damaged the surrounding walls. The auxiliary pump at Granada for circulating brine throughout the refrigeration plant for Granada Arlington and Lincoln Park Manor hotels, was left out of repair for several years, whereby said pump was not usable, thus putting entire load upon and damage was caused to one pump in service, and great strain to the entire refrigeration plant. City National showed eagerness to bail out Cody Trust Company and its officers in paying furniture contract and receiver certificate which were outside any duties of real estate trustee, but had no time to make needed repairs or to seek new tenants for vacant lobby floor space. The many sums of money hereinafter mentioned as taken or paid out by City National without authority, should have been applied

in payment of taxes to prevent litigation and accruing penalties. Failure so to do caused the Skarda proceeding filed September 12, 1934, and other wrongs to debtor estate. During the years 1933 to 1937, City National by willful neglect failed to rent or secure any substantial revenues from valuable and extensive space on the street or lobby floor and the basement of said Granada property. Also City National shows absence of good faith by its manner of bookkeeping. The records kept at its direction at the hotel show only the hotel operating receipts and expenditures. Monthly all net cash balances were drawn out of hotel bank account and transferred to other records at City National Bank not available to any parties in interest and not yet opened to examination by this Court. Vouchers have not been submitted for large sums of money. City National also gave wrongful assent to partial accountings by Central Republic Trust Company and predecessor, which are incomplete as hereinafter shown and stated. By foregoing and other conduct the City National as voluntary trustee caused loss and damage rather than advantage to debtor estate. For this it must pay.

Farm Mortgage Company v. *Cesar*, 62 Pac. (2nd) 1269.

Also that by the statute of Westminster Second (13 Edward I Chapter 14 year 1285) provision is made as follows:

"That all manner of waste done to the damage of any person, there shall from henceforth be no writ of prohibition awarded, but a writ of summons, so that he of whom complaint is (made) shall answer for waste done at any time * * * and after the inquest returned they shall pass unto judgment, like as is contained in the statute of Gloucester."

That said statute of Gloucester (VI Edward I Chapter 5 year 1278) provides:

"And he which shall be attainted of waste, shall lose the thing that he has wasted, and moreover shall recompense thrice so much as the waste shall be taxed at."

That the continuance of this law is evidenced by statute of Illinois approved February 23, 1819, being section 10 of an "Act Concerning Occupiers of Land" (now section 62 of Chapter 45 Ill. Rev. Stat. 1937) reading thus:

"That nothing in this act shall be construed so as to

prevent any court from issuing a precept to stay
177 waste, and ruling the party to give bond and security in such manner as such court may think right."

And said statutes of 1278 and 1285 remain established in Illinois by virtue of section 1, Act March 3, 1845 (now Chapter 28, Ill. Rev. Stat. 1937) reading thus:

"That the common law of England, so far as the same is applicable and of a general nature, and all statutes or acts of the British Parliament made in aid of, and to supply the defects of the common law, prior to the fourth year of James the First (1620) * * * and which are of a general nature and not local to that kingdom, shall be the rule of decision, and shall be considered as of full force until repealed by legislative authority."

Whereby City National should pay and this Court should order payment for benefit of the debtor estate, a sum three times all loss and waste occasioned by or arising from any failure of duty shown in this proceeding.

F. Suggestions Against Account and Report by City National and Its Counsel Filed August 30, 1937 in This Court.

Paragraph 7. The resignation of trustees who were made such by Trust Deed 10161996, and the appointment of City National as successor trustee; were sought by City National as a volunteer; the active members of Granada bondholders' committee were and are junior officials of City National trust department. They carry out directions from controlling officers of City National. In sober truth the City National appointed itself as successor trustee. The bondholders had no knowledge or control over the change, until the present proceedings in this Court. The bondholders, stockholders and creditors of Granada, have had no independent voice or choice in the matter. Under Illinois law the Superior Court in the foreclosure proceeding had no power to litigate or change title, *Jones* v. *Horrom,* 363 Ill. 193. An independent litigation with all parties fully notified of such intentions, would be necessary to enable change of record trustee. No such proceeding has been conducted. Such volunteer meddling by City National is no lawful basis to ask for compensation. By its petition here City National shows itself to be no more than a trustee *de son tort.* It is responsible for its acts and failure to act, but has no legal claim for payment for services.

Paragraph 10. City National to this Court now "represents that it held such possession not as an officer of the Superior Court of Cook County, Illinois, and not by virtue of any orders thereof, but as a matter of right and as mortgagee in possession of the said real estate and premises after condition broken, by reason of which its accounting might not have been properly presented to the Court for approval but might be had only by way of accounting between the parties to the action."

And by Paragraph 26:

"Your petitioner avers that under the law of Illinois a mortgagee without any foreclosure proceedings whatsoever may continue in possession and collect the income, and continue so to do until its debt is paid, regardless of how long that may take, and that the sole remedy of the owner of the property is by way of a proceeding in equity to redeem, in which proceeding on tender and payment of the amount due the lien may be discharged and the trustee may be removed from possession."

Whereby respondents here admit that Superior Court in foreclosure suit had no control over revenues of debtor; that all of its orders as to same are void and outside issues of that proceeding. The supposed accounting with parties in interest never occurred; whatever action taken in Superior Court was adversary.
178 Superior Court refused to consider any accounting.

Such matter was outside any issues before the Court. Same is true of all supposed orders to assume or pay any part of receiver's certificate, or to pay upon furniture contract. Redemption has now been made by paramount law. Trust deed trusteeship is tolled and ended.

In case 5488 U. S. C. C. A.—*Harris* v. *Tuttle,* counsel for City National, then speaking for the Granada Bondholders' Committee say at Page 10:

"It is true that in the case at bar a receiver was originally appointed by the Court (Superior Court, Case 519151 is referred to), and that it was pursuant to Court order that the Receiver surrenders possession to the trustee. However, that order is no way changed the status of the trustees possession once it had obtained it. Its only effect, so far as the trustee is concerned was to furnish it means of obtaining possession without being in contempt of Court by forcible dispossession of the receiver. Thereafter the trustee held the possession with the same right it would have if a receiver had never been appointed."

That theory was sustained by the Supreme Court of the United States in *Harris* v. *Tuttle*, 297 U. S. 225. That conclusion became the law of the case. Respondents are bound thereto. Such possession as trustee owner carries no right to compensation.

Paragraph 12. As events have occurred and now stand, the language quoted by City National from trust deed does not apply. That document 10161996 was prepared by present counsel of City National for its predecessor; whereby respondents must accept strict construction of Article VI, Section 4, reading thus:

"In case trustee shall have proceeded to exercise or enforce any remedy, right or power under this trust deed, by foreclosure, action at law, entry or otherwise, and such proceeding shall have been discontinued or abandoned because of waiver or for any reason or shall have been determined adversely to trustee, then and in every such case, mortgagor and trustee shall be restored to their respective positions and rights in respect of the mortgaged premises, and all remedies, rights and powers shall be and continue as though no such proceedings had been taken."

Whereby City National and its counsel are precluded by words they have chosen. Respondents have no basis for any claim here. City National entry and possession was discontinued by paramount law. Matters now stand and continue as though no such proceedings had been taken. By said language of trust deed matters revert to *status quo ante*. All right to charge or compensation for City National is tolled.

Paragraph 8. City National failed to require a full accounting from its predecessor, Central Republic Trust Company. City National must now respond for all items chargeable to its predecessor as elsewhere mentioned in this pleading. Duty so to account for all acts and transactions of its predecessors as prior trustees in possession of Granada properties, is shown further by findings and decree in this Court, in equity No. 14189, to which reference is now made for greater certainty. From Cody Trust to City National there was adoption of benefits which carry liability to respond here. Cody Trust Company, Chicago Trust Company, Central Trust Company, Central Republic Trust Company and City National Bank and Trust Company are links in a chain of legal duty which the federal trustee now invokes.

Paragraph 9. There were no objections by anyone to

report of Master in Chancery in the Granada Superior Court case 519151. City National did not oppose claim for Master's fee, but paid same without protest. It should have no credit therefor, the item should be falsified and disallowed. $2,552.80 should be refunded.

179 Paragraph 11. By Exhibit A (to bank petition August 30, 1937), which is consolidated audit, City National admits it has on hand in Granada general account, $11.65; in trustee in possession account, $83.10; in foreclosure decree distribution fund, $1,507.76. Said consolidated audit fails to mention house fund, $400.00. These four items total $1,990.86; admitted to be in the hands of City National as trustee for Granada, on May 17, 1937, and not since disbursed but remaining still in its hands. This consolidated audit was not furnished to your federal trustee until August 25, 1937. On many dates from the time of his appointment May 17, 1937, and including August 27, 1937, your federal trustee made demands upon City National and many of its officers and also upon its counsel of record in this proceeding to deliver and pay over to your federal trustee all remaining moneys or property of debtor estate, but City National and its counsel have steadfastly refused and now refuse to turn over or pay over to this Court any of the items so admitted by said audit to be due. On many occasions your federal trustee has called specific attention of City National and its officers to the language used by this Court and its order May 17, 1937, as follows:

"It Is Further Ordered that the City National Bank & Trust Company as Trustee now in possession of the property of the debtor at 525 Arlington Place, Chicago, Illinois, by virtue of the terms and conditions of the first trust deed on said property; and all of its servants and employees and any and all other persons having possession, custody, and control thereof; shall forthwith and immediately surrender possession, control and custody of the aforesaid real estate, together with all monies now in the possession of said trustee, the City National Bank & Trust Company, received from the operation of the said described property, together with any and all other property or assets of whatsoever kind, nature and description belonging to the debtor herein, now in the possession of the said City National Bank & Trust Company, as Trustee; to the said temporary trustee herein."

On May 18, 1937, the day after your trustee was appointed, and in his absence, City National demanded and

coerced the personnel at Granada Hotel to allow them to take away, and they did carry away and now retain hotel receipts and cash on hand at close of business May 17th, after said order was known to City National and its officers and counsel. Said moneys so wrongfully taken amount to $1,107.60.

Wherefore, your federal trustee says that City National and its counsel have wrongfully withheld said sums of money in disobedience of said order of this Court and have hindered your federal trustee in the performance of his duties.

Paragraphs 5, 9, 14, 15 and 20. Payment of $7,500 on receiver certificate was improper, directly contrary to Superior Court order, and contrary to terms of said certificate. The latter provides payment of all taxes for Granada and a reserve of $8,500 net rents to be in hands of City National, before and request for payment could be considered. City National should not have credit for any part of said $7,500, entire item should be falsified, disallowed and repaid with reasonable interest.

Paragraphs 21, 22. Against right and authority during 1936 claimant bank say they have withdrawn for itself and counsel, cash from debtor funds as follows:

Counsel fees, furniture litigation (1934)	$ 2,000.00
Trustees foreclosure fees	1,608.56
Master foreclosure fees	2,552.80
Court legal expenses in *Harris* v. *Tuttle*	167.50
Counsel fees, 77B case in 1935 (*Harris* v. *Tuttle* 297 U. S. 225)	3,857.79
	$10,186.65

All of which items should be falsified, disallowed and repaid together with reasonable interest.

180 Paragraph 23. During the years claimant bank and attorneys were conducting said Superior Court foreclosure case 519151 and were opposing said previous reorganization case (*Harris* v. *Tuttle*) in this Court, they took to themselves fees against right and authority for management of debtor affairs, out of cash funds of debtor arising from real estate rents received by claimant bank as trustee owner in possession.

During calendar year 1934	$ 2,850.79
1935	3,545.48
1936	3,535.17
1937 to May	1,433.05
So-called management fees at least	$11,364.42

All of which should be falsified, disallowed and repaid together with reasonable interest.

Paragraphs 13 and 16. The admitted arrangement between City National and Cody Trust Company and Edward Hall, is now disclosed of record for the first time. There is no authority for such a business. The bondholders, creditors and your federal trustee were uninformed until City National petition was filed August 30, 1937. The Cody Trust Company and its officers had misrepresented the facts with reference to taxes and with reference to personal property. Persons who bought bonds relying on prospectus were lead to believe all taxes had been paid and all charges against furniture and other real and personal property had been fully released and discharged so that the security for the bonds would be a real first mortgage on all the real and personal property at date of issue of the bonds. This was not true either as to the original bond issue in 1924 nor as to the refinancing in 1928. These facts were fully known to City National and its counsel. Instead of seeking to compel Cody Trust Company and its officers to right that wrong they now admit the use of current revenues of the property to employ a representative of Cody Trust Company to keep its officers fully advised of all acts and doings of the self-appointed trustee City National in its management of the property. This occurs at the same time City National is concealing disposition of the net monthly receipts from the property by removing same to its trust department and then switching the moneys around from one account to another. This deliberate confusion is perpetuated by petition August 30th, filed for the purpose of again delaying the paying over and delivery of moneys and property pertaining to debtor estate, withheld by City National.

Paragraph 21. Contrary to statement made in petition, City National did not take active part upon former 77B case. That case had been fully heard and Judge Lindley had announced his decision, before City National sought to intervene under a special appearance. All that City National did was to file its intervening petition and its special appearance and objections in support thereof in the Trial Court in that case. The real defense of that suit and the only party named as appellant in the United States Circuit Court of Appeals and the Supreme Court of the United States was the Bondholders' Committee. Only the Bondholders' Committee appears in

the petition for appeal, the praecipe for record, the citation, the record and the briefs. In fact, all that City National did was to file a special appearance and petition in the Trial Court after that Court had reached its conclusion. This intervention was purely voluntary. City National was not served with any process. The intervention was wholly unnecessary. The act was not at any time authorized by any creditor or bondholder herein. Any fee charge or expense by City National 181 for such intervention for itself or its counsel is without any right or authority, and the item of charge should be falsified and disallowed, and repaid together with reasonable interest. Only purpose of intervention was to continue City National and its counsel in control of Granada property and its revenues. No advantage was gained for bondholders, creditors or stockholders of Granada.

Paragraph 23. For reasons abundantly stated herein City National is not entitled to charge or receive any fee for services.

Paragraph 24. Your federal trustee believes that the items mentioned here are proper charges and should be paid. Federal trustee was compelled to pay some of said bills (Illinois Bell Telephone Company, to City of Chicago Bureau of Water, and $25 to City of Chicago for awning permit) to prevent stoppage of services to the hotel. These items were paid only after repeated protest to City National and its counsel, met by their indifference although as herein stated they had ample funds to pay same. City National should pay these bills.

When your federal trustee was appointed, City National asked that he allow them to pro-rate all items as of date of his appointment. This the federal trustee refused to do because same was contrary to language of order under which he was appointed May 17, 1937, which is quoted above. City National by its counsel then orally asked at the bar of the Court permission from Judge Barnes to pay all bills it had incurred covering transactions prior to May 17, 1937. City National submitted some of its bills to federal trustee who consented to payment of same out of funds in City National hands. About June 1, 1937, City National quit paying and has since refused either to perform the order of the Court May 17, 1937, or to carry out its oral undertaking to pay all bills prior to May 17, 1937. This is one more instance of the obstruction and the evasive conduct of City Na-

tional and its officers in dealing with this estate. Your federal trustee recommends that City National be fined in the discretion of the Court for direct contempt and refusal to perform the order of the Court. And also your federal trustee suggests that City National, its Committee and their counsel be denied any compensation for services hereby claimed in these proceedings.

Paragraph 27. Your federal trustee denies that any such contract was made December, 1933, or at any other time, and denies that there was or is any justification for the acts of the City National and its predecessors in failing to collect from Arlington Hotel the regular payment of $940 or more per month for services rendered. At all times $1,000 per month was and is a reasonable charge for said services to be paid by the Arlington property, earned and due to debtor estate.

Paragraphs 27 and 28. For the years 1933 to 1937 to August 15th, claimant bank (acting in the dual and conflicting capacity of trustee in possession of Arlington Hotel property, and also of Granada Hotel property—debtor estate) collected only $600 per month from the Arlington and paid only that much to the Granada, for hot and cold water, heat and refrigeration services, furnished continuously from the engineering plant and equipment of debtor estate: whereas prior to year 1933 for many years, the sum charged and paid was at the rate of $940 or more per month; by which wrongful reduction and failure of duty by claimant bank, the debtor estate is deprived of at least $340 addi-
182 tional earned compensation per month, for its services past due as follows:

Year 1933	twelve months	$ 4,080 and interest
1934	same	4,080 and interest
1935	same	4,080 and interest
1936	same	4,080 and interest
1937	seven and one-half	2,850 and interest
This rental loss to debtor		$19,170 or more;

which should be paid to debtor estate together with reasonable interest.

This loss is directly shown by the fact that under same management by claimant bank, all real estate taxes on the Arlington Hotel are paid to date; while said taxes are listed unpaid against debtor estate since 1928 (page 8 of plan in this Court and paragraph 17 of City National said report and account). Arlington, Inc., also owes for this item.

Paragraph 29. Petitioner bank admits that the tailor who furnished valet service to guests of Granada Hotel and Arlington Hotel during all said period has occupied space for his business only in the Granada Hotel, and that claimant bank collected as rent only a commission on the business done with Granada guests, but at the same time as trustee for both properties, allowed the Arlington to collect, receive and keep from said tailor (without furnishing him any space) sums as follows which truly belong to debtor estate:

Calendar year	1934	$ 98.74
	1935	72.51
	1936	56.41
	1937 including June	18.86
So there would be due debtor estate more than		$246.52

That said space was and is worth at least twenty-five dollars per month, one half of which should have been charged to the Arlington, so that for this item City National owes at least $375. Arlington, Inc., also owes for this item.

Paragraph 30. Neither City National nor its predecessors made any effort to rent or secure any adequate revenue from said street floor space. The zoning ordinance of the City of Chicago is not as stated, but on the contrary, does permit the use of this space for many available or commercial purposes as an operation inside of the hotel. This space can be put to valuable use of various sorts by proper tenantry without any substantial change or remodeling of the interior. This language of City National petition, like that of the conversation of its officers, shows their unqualified failure to make any effort to use or rent this space but they have been indifferent to same.

Paragraph 31. Wherefore, federal trustee says it is plain that claimant bank wholly failed in its duties as such trustee and is not entitled to receive any compensation; but on the contrary should be required to refund all sums it has previously taken to itself or paid to its counsel, and should in addition be required to refund or pay to debtor estate all losses permitted or occasioned by the failure of claimant bank in its duties to debtor estate, in its relation as such voluntary trustee.

Wherefore, federal trustee further asks instructions from this Court as to what additional steps shall be taken by him to recover said moneys for debtor estate, and he prays full

hearing and general relief in this Court against the respondents. Federal trustee asks that:

1. City National Bank and Trust Company, its counsel of record have leave to file such reply as they may be advised to this pleading.

183 2. That City National Bank and Trust Company be held in contempt of the Court for refusing to perform the orders of this Court, above stated.

3. That City National be compelled forthwith to pay over said sum of $1,990.86, by its audit admitted to be now in its hands, and since May 17, 1937.

4. That the Court order the account of City National to be surcharged and falsified as stated hereinabove, and order City National to file forthwith in this proceeding a true and correct final account, and that City National be ordered to pay over all said sum to debtor estate.

5. That the Court find the amount of loss and damage to the estate by the misconduct of City National, and require it to pay said sum thrice over pursuant to the statute above stated.

6. That proper directions be given to your trustee as need therefor may arise from a full trial.

Respectfully submitted,

Weightstill Woods,

Federal Trustee.

State of Illinois, }
County of Cook. } ss.

Weightstill Woods being sworn states that as part of his duties as Federal Trustee since May 17, 1937, he has made investigation of the matters mentioned in the foregoing pleading, and to the best of his knowledge, information and belief, the same is true and correct.

Weightstill Woods.

Subscribed and sworn to before me this 9th day of September, 1937.

Alexander O. Ramlose,

(Seal) *Notary Public Cook County, Illinois.*

186 And afterwards, to wit, on the 14th day of September, A. D. 1937, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

187 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—65811) * *

Tuesday, September 14, A. D. 1937.

Present: The Honorable John P. Barnes, District Judge.

On motion of Solicitors for City National Bank & Trust Company Successor Trustee under First Mortgage It Is Ordered that leave be and the same is hereby given to file amendment to proof of claim. It is further ordered that the objections heretofore filed stand to claim as amended.

Entered Sept. 14, 1937.

188 And on, to wit, the 14th day of September, 1937, came the City Natl. Bank & Trust Co. of Chicago, Successor Trustee, by its attorneys and filed in the Clerk's office of said Court its certain Amendment to Proof of Claim in words and figures following, to wit:

189 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—65811) * *

AMENDMENT TO PROOF OF CLAIM OF SUCCESSOR TRUSTEE.

State of Illinois } ss.
County of Cook }

At Chicago, for the Northern District of Illinois, in the Eastern Division thereof, on the 14th day of September, 1937, came W. E. Toon and made oath and says:

1. That he resides in Oak Park, in the County of Cook and State of Illinois, that he is over twenty-one years of age and is an Assistant Trust Officer of City National Bank and Trust Company of Chicago (hereinafter for convenience called "Claimant"), a banking corporation having its principal office and place of business in the City of Chicago,

Illinois, and as such is duly authorized to make this amendment to the proof of claim heretofore filed by Claimant as successor Trustee under the certain trust indenture from Granada Hotel Corporation, a corporation, the Debtor in the above entitled proceedings, to Chicago Trust Company,
as Trustee, dated September 1, 1928, and recorded in
190 the Office of the Recorder of Deeds of Cook County,
Illinois, on October 1, 1928, as Document 10161996, on behalf of itself as such successor Trustee and of the holders of bonds and interest coupons appertaining thereto issued and outstanding under said trust indenture.

2. That paragraph 7 of said proof of claim be amended so that said paragraph as so amended be and read as follows:

"7. That no part of said indebtedness has been paid, except that a balance of funds in possession of Claimant as of September 30, 1936, in the amount of One Thousand Six Hundred Eight Dollars and Fifty-six Cents ($1,608.56) was applied in and by said decree entered on December 18, 1936 in the Superior Court of Cook County, Illinois, to the indebtedness in the sum of Ten Thousand Eight Hundred Forty-nine Dollars and Ninety Cents ($10,849.90), as set forth in paragraph 5 of this proof of claim for moneys due and owing to Claimant for its own use and benefit.

W. E. Toon.

Subscribed and sworn to before me this 14th day of September, A. D. 1937.

Kirsten Sorensen,
(Seal) *Notary Public.*

My Commission expires November 21, 1938.

191 And afterwards, to wit, on the 14th day of September, A. D. 1937, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

Entered Sept. 14, 1937.

192 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—65811) * *

Tuesday, September 14, A. D. 1937.

Present: The Honorable John P. Barnes, District Judge.

On motion of Weighstill Woods Trustee It Is Ordered that leave be and the same is hereby given him to file instanter petition to determine inter-hotel services. It is further ordered that any party in interest who desires to file answer thereto be and he is hereby ruled to file such answer within 5 days from this date and hearing on said Petition and Answer if any is set for September 21 A. D. 1937 2 P. M.

193 And afterwards, to wit, on the 14th day of September, A. D. 1937, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

194 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—65811) * *

Tuesday, September 14, A. D. 1937.

Present: The Honorable John P. Barnes, District Judge.

On motion of Solicitor for the Trustee It Is Ordered that leave be and the same is hereby given the Trustee to file instanter a petition to determine Real Estate Taxes and hearing on said petition is set for September 30, A. D. 1937. It is further ordered that the City National Bank & Trust Company, as Trustee be and it is hereby ruled to file such answer as it may desire to answer and counter claim of Court Trustee to the petition heretofore filed by said City National Bank & Trust Company as Trustee and the hearing thereon is set for September 21, A. D. 1937 at 2:00 P. M.

195 And on, to wit, the 14th day of September, 1937, came Weightstill Woods, Trustee and filed in the Clerk's office of said Court his certain Petition in words and figures following, to wit:

196 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Sept. 14, 1937.
* * (Caption—65811) * *

PETITION BY COURT TRUSTEE TO HAVE DETERMINED COMPENSATION FOR SERVICES AS TO ARLINGTON HOTEL.

A. Weightstill Woods by order of this Court entered May 17, 1937, was appointed and now remains the duly qualified and acting federal trustee for estate of debtor in these proceedings.

B. This Court by order July 14th, confirmed a plan of reorganization for the property and affairs of debtor; and by orders, July 14th, 15th, 17th and August 30th, has reserved full power and jurisdiction to hear and determine all matter herewith presented.

C. Your trustee gave notice June 15, 1937 of his intention to prepare and present this petition; as shown by copy attached as Exhibit (1) hereto.

D. This Court by its order July 14th, 1937, in confirming the plan of reorganization among other things decreed as follows:

"There are no contracts of the Debtor which are executory in whole or in part and no unexpired leases which have been rejected or surrendered."

E. Thereafter on July 28, August 13, August 14 and August 16, 1937, correspondence occurred as shown by four letters of which copies are attached as Exhibit (2)-a-b-c-d to this petition.

197 F. Thereafter on September 9, 1937 your Court trustee filed answer and counterclaim to petition of City National Bank and Trust Company for settlement of its accounts, and as part of said answer and counterclaim therein stated to the Court:

"Your federal trustee denies that any such contract was made December, 1933, or at any other time, and denies that there was or is any justification for the acts of the City National and its predecessors in failing to collect from Arlington Hotel the regular payment of $940 or more per month for services rendered. At all times $1,000 per month was and is a reasonable charge for said services to be paid by the Arlington property, earned and due to debtor estate.

For the years 1933 to 1937 to August 15th, claimant bank (acting in the dual and conflicting capacity of trustee in

possession of Arlington Hotel property, and also of Granada Hotel property—debtor estate) collected only $600 per month from the Arlington and paid only that much to the Granada, for hot and cold water, heat and refrigeration services, furnished continuously from the engineering plant and equipment of debtor estate; whereas prior to year 1933 for many years, the sum charged and paid was at the rate of $940 or more per month; by which wrongful reduction and failure of duty by claimant bank, the debtor estate is deprived of at least $340 additional earned compensation per month, for its services past due as follows:

Year 1933	twelve months	$4,080 and interest
1934	same	4,080 and interest
1935	same	4,080 and interest
1936	same	4,080 and interest
1937	seven and one-half	2,850 and interest

This rental loss to debtor.....$19,170 or more; which should be paid to debtor estate together with reasonable interest.

This loss is directly shown by the fact that under same management by claimant bank, all real estate taxes on the Arlington Hotel are paid to date; while said taxes are listed unpaid against debtor estate since 1928 (page 8 of plan in this Court and paragraph 17 of City National said report and account). Arlington, Inc., also owes for this item."

Wherefore, your Court Trustee asks:

(1) That Arlington, Inc., be required to answer this petition.

(2) That Arlington, Inc., be required to pay forth-198 with the sum of $1,000 for one month beginning September 16, 1937, as a condition of the continuance of said heat, hot and cold water and refrigeration services, while this petition is being heard and these matters are being determined by the Court.

(3) That the Court determine and decree what sum is due from Arlington, Inc., for said services to date; and also determine and decree whether said services shall be continued, and if so, what is a reasonable payment monthly to be made by Arlington, Inc., for a continuance of such services as the Court may direct.

Respectfully submitted,

Weightstill Woods,

Federal Trustee.

State of Illinois } ss:
County of Cook }

Weightstill Woods being sworn states that as part of his duties as Federal Trustee since May 17, 1937, he has made investigation of the matters mentioned in the foregoing pleading, and to the best of his knowledge, information and belief, the same is true and correct.

Weightstill Woods.

Subscribed and sworn to before me this 14th day of September, A. D., 1937.

Anita E. Malkin,
(Seal) *Notary Public, Cook County, Illinois.*

199 EXHIBIT 1 TO PETITION BY COURT TRUSTEE.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—65811.)

Notice to:

City National Bank and Trust Company Individually and as Trustee,
Bondholders Committee for Arlington Hotel Property,
Bondholders Committee for Granada Hotel Property,
Defrees, Buckingham, Jones and Hoffman, Their Attorneys:

The undersigned Trustee advises all concerned that he is collecting, accounting and engineering data in regard to what are known as "Inter Hotel Accounts," including charges that have been or should be made for services and facilities rendered and furnished at any time by the Granada Hotel Property and its Management to the Arlington Hotel Property (530 Arlington Place): that when such data is in hand in suitable form, the undersigned Trustee will report the same to this Court for directions and orders as to appropriate action thereon to be taken by the undersigned Trustee.

In due course you will receive copy of such report, together with notice of time and place when application will be made thereon to the Court for instructions to be undersigned.

Present notice is supplemental to the demand in writing made upon you June First 1937. June 15, 1937.

Respectfully yours,
Weightstill Woods,
Temporary Trustee.

Received copy of Foregoing Notice this June 15, 1937.
City National Bank and Trust Company individually and as Trustee,
Bondholders Committee for Arlington Hotel Property,
Bondholders Committee for Granada Hotel Property,
Defrees, Buckingham, Jones and Hoffman,
Their Attorneys.
By Vincent O'Brien.

200 EXHIBIT 2-A TO PETITION BY COURT TRUSTEE.

Granada USDC 65811

July 28, 1937

City National Bank
and Trust Company,
Mr. Arthur T. Leonard
Trust Department

Dear Mr. Leonard:

Supplementing correspondence and conference with your attorneys Defrees Buckingham Jones and Hoffman, and with personnel of your Trust Department during the past two months, add with reference to one of the items of your account discussed with you and Mr. O'Brien at your office this morning, I am writing to affirm my view and decision that the payments made for the past five years by the hotel Arlington property and management to the Granada property and management, for the services rendered and performed by Granada to the Arlington, are entirely inadequate and too low to be classed as reasonable compensation.

With your desire that sundry items of your account shall be passed upon speedily by the Court I shall cooperate.

However until a court decision has been obtained, I

must ask that the Arlington management pay per month on account, the sum of one thousand dollars due monthly in advance, for my continuation of such services. The payment for July is past due and should be made immediately; and payment for August should follow next week. If such payment is not made I shall so report to the Court, and will recommend that all services to the Arlington be cut off for nonpayment.

A copy of this letter is being mailed to your Attorneys.

Sincerely,

Weightstill Woods,
Federal Trustee.

201 EXHIBIT 2-B TO PETITION BY COURT TRUSTEE.

THE ARLINGTON, INC.
Second Floor
208 So. LaSalle St.
Chicago

August 13, 1937.

Weightstill Woods, Esq.,
77 West Washington Street,
Chicago, Illinois.

Re: Granada Apartments, Inc.

Dear Mr. Woods:—

Your letter directed to the City National Bank and Trust Company requesting that the Arlington pay $1,000 per month on account for heat, water, refrigeration, etc., has been referred to the undersigned.

Careful investigation indicates to us that the amount presently being paid is more than adequate. We understand however, that you believe it is not and that the matter will ultimately have to be determined by the court. Pending such determination we do not believe that the amount should be increased.

Very truly yours,
The Arlington, Inc.
By (W. G. Sturm)
W. G. Sturm,
Vice President.

WGS:MG

202 EXHIBIT 2-C TO PETITION BY COURT TRUSTEE.

August 14, 1937.

City National Bank and
Trust Company of Chicago
Mr. Arthur T. Leonard
Trust Department.

Granada USDC 65811

Dear Mr. Leonard:

Until now I have been waiting for you to answer my letter to you dated July 28. Maybe you deem it unimportant. Also you have failed to make the payments therein requested. You are not available on the telephone today, and your Attorney Mr. Vincent O'Brien is absent until Monday, but your trust officer Mr. W. G. Sturm informs me today that you have organized within the last few days a new corporation called The Arlington Company, to own the Arlington property.

This situation presents an appropriate time for action. Herewith is returned your check for $600 received yesterday. The amount is not satisfactory; I have given directions that all services from the Granada to the Arlington property, be cut-off on Monday August 16 at noon. The cold water circulation will be continued a short time to enable you to complete the connection you have been at work upon direct with the city water main. When that connection is made, please notify me of that fact.

Below is appended final bill to date on this item of account.

Sincerely,
Weightstill Woods,
Federal Trustee.

City National Bank and Trust Company Individually and as Trustee for Arlington Hotel property 530 West Arlington Place In account with

Granada Apartmeits Inc USDC 65811

Arrears for water heat and refrigeration to date August 15 ..... $20,000***

203 EXHIBIT 2-D TO PETITION BY COURT TRUSTEE.

August 16, 1937

Mr. Weightstill Woods,
Trustee in Bankruptcy of
Granada Apartments, Inc.,
77 West Washington Street,
Chicago, Illinois.

Dear Mr. Woods:

Upon receipt of your letter of August 14, 1937, directed to City National Bank and Trust Company of Chicago, attention of Arthur T. Leonard, Trust Department, that all services from the Granada to the Arlington property will be cut off at noon on Monday, August 16th, we discussed the matter with Mr. Vincent O'Brien, of Defrees, Buckingham, Jones & Hoffman.

Pursuant to your conversation with him, we are enclosing herewith check in the sum of $1,000 on account of heat, water, hot water and refrigeration, the proceeds of which are paid by us and received by you without prejudice and on the understanding that no further payment will be required prior to September 15, 1937, and that on that date, or as early thereafter as convenient, the precise amount payable for the service used is to be determined by Judge Barnes.

Very truly yours,
The Arlington, Inc.
By (W. G. Sturm)
Vice President.

Received the above mentioned check for $1,000, upon the conditions above set forth.

(Weightstill Woods)
Trustee.

(EXHIBIT 2-C to petition by Court Trustee—August 16, 1937. Not copied.)

204 EXHIBIT 2-C TO PETITION BY COURT TRUSTEE.

Weightstill Woods
Attorney and Counselor
77 W. Washington St.
Chicago

August 16, 1937

City National Bank and Trust Company
individually and as Trustee
The Arlington Inc.
208 South LaSalle
Chicago, Illinois.

Attention Messrs Leonard and Sturm

In Account With
Granada Apartments Inc.
USDC Chicago No. 65811

To arrears for water, heat and refrigeration service, per letter August 14, 1937	$20,000****
Charge for said services for month ending September 15, 1937	1,000****
Received on account without prejudice, check 1369 dated August 16, 1937	1,000*****
Balance due Granada for water, heat and Refrigeration	$20,000*******

208 And on, to wit, the 14th day of September, 1937, came Defrees, Buckingham, Jones & Hoffman, Counsel for Bondholders' Protective Committee, and filed in the Clerk's office of said Court their certain Petition for allowance of Fees in words and figures following, to wit:

209 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Sept. 14, 1937.
(Caption—65811)

PETITION OF DEFREES, BUCKINGHAM, JONES & HOFFMAN FOR ALLOWANCE OF COUNSEL FEES.

Now comes Defrees, Buckingham, Jones & Hoffman, of Chicago, Illinois (hereinafter called the "Petitioner"), and respectfully represents:

1. That Petitioner is counsel for Charles S. Tuttle, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, presently constituting the Bondholders' Protective Committee (hereinafter called the "Committee"), acting under and pursuant to the certain Deposit Agreement dated April 25, 1933.

2. That there are now on deposit with said Committee Three Hundred Thirty-one Thousand Six Hundred Dollars ($331,600) principal amount of First Mortgage Six Per Cent Real Estate Gold Bonds dated September 1, 1928, issued by Granada Building Corporation, a corporation, and secured by Trust Deed dated September 1, 1928, to Chicago Trust Company, a corporation, as Trustee, and recorded in the Recorder's Office of Cook County, Illinois, on October 1, 1928, as Document No. 10161996, the said Trust Deed covering the property owned by the Debtor herein.

3. That in accordance with its representation of
210 said Committee, Petitioner has devoted much time and effort to matters requiring the advice of counsel arising from time to time in connection with the activities of the Committee and its participation in these proceedings for the reorganization of Debtor; and that attached hereto as Exhibit "A", and by this reference thereto incorporated herein is a description of the nature of the legal services heretofore rendered in this cause by Petitioner.

4. That in addition to the services already rendered, Petitioner necessarily will perform other services prior to the consummation of the Plan of Reorganization which, from experience of Petitioner in other proceedings under Section 77B of the Bankruptcy Act, as amended, will involve the spending of considerable time and effort with respect thereto, the nature of such services being in general as follows:

(a) Services to be rendered in connection with the final draft of the Voting Trust Agreement provided for in the Plan of Reorganization and the obtaining of the approval by the Court of the form thereof and in connection with the execution and delivery thereof by the parties thereto;

(b) Services to be rendered in connection with the preparation of the Participation Certificates to be issued pursuant to said Voting Trust Agreement and matters arising in connection with the issuance and distribution thereof;

(c) Services in connection with the preparation of the Certificate of Incorporation and By-laws of the Reorganized Company provided for in the Plan of Reorganization, and obtaining the approval of the form thereof by the Court;

(d) Services to be rendered in connection with the preparation of corporate minutes of directors' and stockholders' meetings with respect to the organization of said Reorganized Company.

(e) Services to be rendered in connection with the preparation of the instrument of release of the Trust Deed securing the First Mortgage Six Per Cent Real Estate Gold Bonds and of the Trust Deed securing the Second Mortgage Six Per Cent Real Estate Gold Bonds of Debtor, the obtaining of the approval by the Court of the forms thereof and in connection with the execution and recording thereof and in connection with the preparation and execution of the instrument of satisfaction of the foreclosure decree with respect to the First Mortgage Six Per Cent Real Estate Gold Bonds of the Debtor and in connection with the preparation of the instrument of release of the Chattel Mortgage of Debtor;

(f) Services to be rendered in connection with the obtaining of a loan, if necessary, in connection with the new financing as provided for in the Plan of Reorganization and in connection with the elimination of any objections to the title to the property of said Reorganized Company acquired through these reorganization proceeding; and

(g) Services in connection with the preparation and entry of a final decree in these proceedings.

5. That Petitioner has not received any compensation for services rendered in these proceedings.

6. That the services rendered and to be rendered for

which compensation is requested were and are to be performed on behalf of the said Committee and not on behalf of any other person or persons.

7. This application is made pursuant to Section 77B of the Bankruptcy Act, as amended.

Wherefore, your Petitioner prays that an order be entered herein allowing your Petitioner as a cost of administration in these proceedings reasonable compensation for services rendered and to be rendered in these proceedings.

Defrees, Buckingham, Jones & Hoffman,
By Vincent O'Brien,
A Partner.

212 State of Illinois, } ss.
County of Cook. }

Vincent O'Brien, being first duly sworn, on oath deposes and says that he is a partner in the firm of Defrees, Buckingham, Jones & Hoffman, the Petitioner herein; that he has read the foregoing petition by him subscribed for and on behalf of said Petitioner; and that he knows the contents thereof and that the same is true.

Vincent O'Brien.

Subscribed and sworn to before me this 13th day of September, A. D. 1937.

Kirsten Sorensen,
(Seal) *Notary Public.*

213 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—65811) * *

AFFIDAVIT.

State of Illinois, } ss.
County of Cook. }

Vincent O'Brien, being first duly sworn, deposes and says that he is a duly licensed and practicing attorney in the City of Chicago, County of Cook and District aforesaid.

Affiant further states that he is a member of Defrees, Buckingham, Jones & Hoffman, the Petitioner herein; that said Defrees, Buckingham, Jones & Hoffman has

made no agreement, directly or indirectly, and that no understanding exists, for a division of fees between the applicant and the Receiver, Trustee, Bankrupt, Debtor, the attorney of any of them, or any one else, and this affidavit is made pursuant to the rules of the Supreme Court and pursuant to the rules of this Honorable Court.

Further affiant sayeth not.

Vincent O'Brien.

Subscribed and sworn to before me this 13th day of September, A. D. 1937.

Kirsten Sorensen,
Notary Public.

(Seal)

214 EXHIBIT "A."

Services Rendered by Defrees, Buckingham, Jones & Hoffman, Counsel for Bondholders Protective Committee in Connection With Proceedings for Reorganization of Granada Apartments, Inc., a corporation.

(a) Preparation of the following:

Resolutions of the Committee relating to the adoption of the Plan of Reorganization of the Debtor;

Petition of Committee for leave to intervene in these proceedings to file Plan of Reorganization of Debtor and to submit Plan of Reorganization of Debtor to creditors and stockholders of Debtor;

Plan of Reorganization of Debtor;

Order authorizing filing and submission of Plan of Reorganization to creditors and stockholders; classifying claims of creditors; fixing time and manner in which to file objections to Plan of Reorganization; fixing time and manner of filing acceptances to Plan of Reorganization; fixing time and manner of filing claims; fixing time and manner of filing objections to claims; fixing time and place for proposal by the Commitee of the Plan of Reorganization and hearing thereon; fixing time and manner for giving notice to creditors and stockholders of Debtor of the above matters; and including in said order form of notice to creditors and stockholders and form of acceptance of Plan of Reorganization;

Petition of Committee to set certain conflicting claims for hearing before the Court;

Proof of claim of Committee with respect to First Mortgage Six Per Cent Real Estate Gold Bonds deposited with it;

Acceptance of Plan of Reorganization with respect to First Mortgage Six Per Cent Real Estate Gold Bonds on deposit with Committee with respect of which no dissents were filed;

Order with respect to allowance or disallowance of claims against Debtor filed in these proceedings;

Preliminary draft of Voting Trust Agreement provided for in the Plan of Reorganization; and

215 Order of confirmation of Plan of Reorganization, including in said order amendments to the Plan of Reorganization, various provisions as to the manner of consummating said Plan of Reorganization and for filing petitions for fees and expenses herein and providing for time and place of hearing with respect to said petitions and other matters germane to these proceedings not then determined;

(b) Appearances before the Court in connection with the entry of orders set forth in paragraph (a) and appearances in Court in connection with the approval of the original petitions filed herein and the appointment of the temporary Trustee and the hearing with respect to the making of such appointment of the Trustee permanent and in connection with several motions made in these proceedings;

(c) Appearances before Referee Carl H. Chindblom in connection with claims against Debtor filed herein and objections filed thereto by the Trustee in these proceedings;

(d) Conferences and correspondence with Committee, Trustee in these proceedings and attorneys representing various interests relating to matters set forth in paragraphs (a), (b) and (c) above.

(e) Examination of various documents in connection with the reorganization of Debtor, including examination of original petitions and answers thereto filed herein and the order approving said petitions and appointing temporary Trustee in these proceedings and the examination of claims against Debtor filed with the Special Master herein and the Special Master's report thereon and of the consents to the Plan of Reorganization filed with the Special Master and the report of the Special Master thereon; and

(f) Examination of law in connection with various matters arising from time to time in these proceedings.

Filed Sept. 14, 1937.

216 And on, to wit, the 14th day of September, 1937, came the Committee for the Protection of Holders of First Mortgage Bonds, by its attorneys and filed in the Clerk's office of said Court its certain Petition in words and figures following, to wit:

217 In the District Court of the United States.

* * (Caption-65811) * *

Petition for Fees and Expenses of the Committee for the Protection of the Holders of First Mortgage Bonds.

To the Honorable John P. Barnes, one of the Judges of said Court:

Your Petitioners, Charles S. Tuttle, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, respectfully represent:

1. That Petitioners presently constitute the Portective Committee (hereinafter called "Committee") acting under the Deposit Agreement dated April 25, 1933 with respect to the First Mortgage Six Per Cent Real Estate Gold Bonds dated September 1, 1928 issued by Granada Building Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee.

2. That the original principal amount of said First Mortgage Bonds secured by said Trust Deed was Five Hundred Twenty-five Thousand Dollars ($525,000), that the first default in the payment of said First Mortgage Bonds occurred on March 1, 1932 and that at the time of said first default there were unpaid and outstanding said First Mortgage Bonds in the principal amount of Five

218 Hundred Ten Thousand Dollars ($510,000).

3. That by reason of said default and of subsequent defaults in the payment of the principal of, and interest on, the First Mortgage Bonds, a Committee was organized after said defaults for the protection of the holders of the said First Mortgage Bonds under the certain Deposit Agreement dated April 25, 1933 and that your Petitioners are the present members of the Committee acting under said Deposit Agreement.

4. That the Committee caused the said Deposit Agreement to be prepared and after its organization it caused letters of transmittal to be sent to bondholders in depositing said First Mortgage Bonds; that there were approximately 550 holders of said First Mortgage Bonds scat-

tered through Illinois and other States; that the Committee received from bondholders the deposit of a substantial amount of First Mortgage Bonds, the deposited First Mortgage Bonds now aggregating Three Hundred Thirty-one Thousand Six Hundred Dollars ($331,600) principal amount thereof, and to evidence the deposit of such First Mortgage Bonds the Committee prepared and caused to be issued to depositors Certificates of Deposit in the form prescribed in and by the Deposit Agreement.

5. That the Committee caused a survey of the mortgaged property to be made in respect to its physical condition, occupancy, income and value, and that it also made surveys in respect of the general taxes and special assessments against the mortgaged property and insurance, and the situation with respect to the equipment and
219 fixtures in said property; that the Committee gave consideration to the amount and nature of the defaults under the said Trust Deed securing said First Mortgage Bonds to ascertain whether said defaults could or would be cured so as to make foreclosure proceedings unnecessary, and determined that they could not and would not be so cured, and that accordingly it approved the cross-complaint filed by Central Republic Trust Company, a corporation, as Successor Trustee under said Trust Deed, filed in the Superior Court of Cook County, Illinois, in cause No. 519151, to foreclose the lien of the Trust Deed securing the Bonds and furnished said Successor Trustee indemnity in respect of such action; that thereafter the Committee made further studies of the property to determine whether a reorganization of the property could then be effected; that the Committee's efforts to develop a Plan of Reorganization were unsuccessful, primarily because of lack of funds with which to finance a foreclosure sale; that after the filing of the petition herein the Committee, in cooperation and after conferences with the Debtor and with the representatives of others interested in these proceedings and in the property of Debtor, formulated the Plan of Reorganization proposed herein and secured its confirmation by the Court herein; that in connection with the formulation of the Plan of Reorganization and with the proceedings herein the Committee, its agents, representatives and counsel held many conferences with representatives and counsel of the Debtor and with holders of certain claims against the Debtor, and the Committee has taken the leading part in the reorganization sought to be effected herein.

220 6. That by reason of the relationship between the Committee and the depositors constituted by the deposit of First Mortgage Bonds under the Deposit Agreement, the use of the facilities furnished by the Committee, the keeping by the Committee of a record of the names and addresses of the holders of the First Mortgage Bonds, and the resulting unification of the interests of widely scattered holders of deposited First Mortgage Bonds, the Committee provided the means and was enable to prepare, propose and make possible the confirmation of the Plan of Reorganization filed by it herein. The deposit of the said First Mortgage Bonds resulted in a consolidation of the ownership and control of the Bonds which greatly aided and simplified these proceedings by making it possible for the Committee to file one proof of claim with respect to all deposited First Mortgage Bonds and one acceptance of the Plan of Reorganization with respect to all deposited First Mortgage Bonds to which dissents from the Plan of Reorganization were not filed with the Committee. This made it possible to obtain the consent of holders of two-thirds in amount of said First Mortgage Bonds in much less time and with much less effort than would have been required had it been necessary to obtain the individual affirmative consents of the holders of deposited First Mortgage Bonds. The fact that the Plan of Reorganization was approved and recommended by the Committee aided materially in securing the necessary consents to the Plan of Reorganization, as is apparent from the fact that practically all depositors accepted the Committee's recommendation in this case.

221 7. That the Deposit Agreement hereinabove referred to provides that the Committee shall be entitled to be reimbursed for all disbursements, expenses and liabilities made or incurred by it or by its agents on its behalf in exercising any powers and performing any duties therein vested in the Committee, and shall be entitled to hold and to resort to the deposited First Mortgage Bonds and coupons for such expenses, including the compensation and expenses of the Depositary and of such attorneys, engineers, accountants, appraisers, superintendents, laborers, agents and employes as the Committee might employ and for any and all disbursements made and indebtedness or liabilities incurred by the Committee.

8. That the said Committee has incurred certain expenses and obligations for the use of the facilities and personnel of City National Bank and Trust Company of

Chicago, and that such expenses so incurred are expenses of reorganization under the provisions of Section 77B of the Bankruptcy Act, and are subject to the approval of the Court. The "out of pocket" expenses of the Committee are listed in the schedule attached hereto, marked Exhibit A and made a part hereof.

222

9. That during the year 1932 City National Bank and Trust Company of Chicago formed a special organization composed of men who were experienced in managing real estate properties and were familiar with real estate bond issues and reorganizations, and rented space outside the banking quarters for the use of this organization; that the salaries of the men in this organization, together with the rent, light, postage and other incidentals expenses incurred in carrying on the work of this organization, were allocated to the various committees constituted for the protection of the holders of defaulted issues of First Mortgage Bonds; that it was the intention and understanding of the officers of said Company in charge of this work that the expenses of this special organization would be charged against the committees as an expense in the same manner as the expenses of the Depositary and all other expenses incurred by the committees.

That since the formation of the Committee with respect to the First Mortgage Bonds of Debtor City National Bank and Trust Company of Chicago has been furnishing the facilities necessary to carry on this reorganization work, including personnel, office space, light and all of the incidental facilities for which it has expended thousands of dollars; that City National Bank and Trust Company of Chicago found it expedient to employ the services of certain of your Petitioners, who were serving without personal compensation as members of the Committee; that certain of your Petitioners were so retained and were so employed, not as members of any committee, but as employes or officers devoting their time to the Reorganization Division of City National Bank and Trust Company of Chicago.

223

10. That the Committee retained City National Bank and Trust Company of Chicago to render services as Depositary of the Committee in this and in some other instances; that it was believed, and subsequent experiences show, that by retaining City National Bank and Trust Company of Chicago in these various capacities it was possible to procure such necessary services more economi-

cally than if those services had been rendered by separate institutions or organizations, and that the Committee desired to keep the cost of reorganization at the lowest possible figure.

That the services performed and to be performed by City National Bank and Trust Company of Chicago, as Depositary, consist in part of the following:

The acceptance of Bonds over the counter and through the mail.

The examination of Bonds as to negotiability and coupons, their genuineness and acceptability for deposit 224 and of any instructions accompanying deposited Bonds and coupons.

The communication with bondholders relative to missing coupons and registered Bonds, transmittal letters and manner of registering Certificates of Deposit. Also, examination of legal documents supporting deposits of executors, trustees and other fiduciaries. Reporting deposits and transfers of Certificates of Deposit to Secretary of Committee.

The recording of all Bonds and coupons accepted for deposit upon the deposit record together with the names and addresses of depositors and, after the issuance of Certificates of Deposit, the checking of Certificates of Deposit and the mailing thereof by the Depositary or the delivery thereof over the counter. From the deposit record the Depositary sets up and maintains ledger accounts for Certificates of Deposit.

The delivery of new securities to depositors upon surrender of Certificates of Deposit and also undeposited securities involving frequent consultation and correspondence with holders of such Certificates and securities by reason of request for issuance of new securities in names of others than the depositors or holders of such undeposited securities occasioned by the appointment of an executor or administrator and trustee and other fiduciaries or otherwise, involving examination of legal documents.

The handling of the actual transfer with the transfer agent or company issuing the new securities.

The closing out of depositors' accounts at such time when new securities are delivered and Certificates presented to it for cancellation.

The custody of new securities and the maintenance of records until all Certificates of Deposit are surrendered. These duties may continue a number of years. Also, correspondence with bondholders for an undetermined

length of time, who still look to the Depositary as the source of information regardless of whether the new securities are in their possession and issued by some one other than the Depositary;

that there have been deposited with the Depositary Three Hundred Thirty-one Thousand Six Hundred Dollars ($331,600) in principal amount of Bonds; and that City National Bank and Trust Company of Chicago will continue to act as such Depositary until such time as its duties under said Deposit Agreement and Plan of Reorganization have been fully complied with.

11. That the services rendered by the Reorganization Division of City National Bank and Trust Company of Chicago at the instance of your Petitioners have consisted, among other things, of the following:

Maintaining a personnel capable of handling the problems involved in this reorganization, including persons familiar with the management of the property involved in this reorganization and familiar with this Bond issue and the problems involved in the reorganization of this Bond issue, and the stenographic and clerical help necessary to carry on this work; negotiating with the owners of the property, and other interested parties; preparing Certificates of Deposit, transmittal letters, letters to bondholders, and other instruments; answering numerous inquiries from bondholders and attorneys and others interested in the mortgaged property; spending considerable time with such persons who called at the office of the Reorganization Division and who were interested to determine what was being done with reference to the operation and reorganization of the property; examining various audited reports and surveys with reference to the operation of the mortgaged property; advising those in charge of such operations; preparing the list of bondholders; tracing sales and transfers of Bonds and securing the names and addresses of the new holders thereof; keeping the minutes of the various meetings of your Petitioners; mailing certain letters and communications, including the Plan of Reorganization, to the bondholders pursuant to the orders of this Court; obtaining the required number of acceptances of the Plan of Reorganization confirmed in this proceeding and filing acceptances on behalf of the holders of Bonds in this proceeding; making necessary surveys and valuations in connection with the property; and in general furnishing all of the facilities and personnel required by your Petitioners in carrying out their

work of reorganization this property and protecting the interest of the holders of the Bonds.

That the personnel of the said Reorganization Division so retained by your Petitioners consisted of the following during the greater portion of the period from 1932 to date:

226 Four or five men continually interviewing and corresponding with the bondholders; three men handling the work of the Secretary of the Committee, including keeping the minutes of the various meetings and other records; supervising all mailings, and generally coordinating the reorganization work; three or four men in the legal division rendering general advisory services; three men negotiating with various persons interested in the properties, preparing necessary statistical information and formulating the Plan of Reorganization; two men generally supervising the entire work of the Reorganization Division, and two men devoting part of their time, one in an advisory capacity with reference to the problems of managing the various properties and the other generally supervising the entire services rendered by your Petitioners; that in addition there are seven stenographers and two clerks; and that the personnel as stated above consists of twenty-five persons devoting full time to this work and two persons devoting part time.

That there has also been made available to your Petitioners the use of the general filing division, bookkeeping and auditing division of City National Bank and Trust Company of Chicago, and in addition certain other services, such as messenger, police and information services, tax and insurance services, and appraisal and survey services.

That some of the matters to which your Petitioners so gave attention were also handled by the Trustee under the First Mortgage. Nevertheless, it was essential that your Petitioners be fully advised of the facts and inquire into each separate matter, because in respect of the depositing bondholders they occupied a separate legal status and were under a separate obligation.

That as a result of the formation of the First Mortgage Bondholders' Committee, and because of the machinery available to it as such, and because of its knowledge of

227 the problems presented, gained over a period of more than four years, it was enabled to formulate the Plan of Reorganization approved in this proceeding and to procure the assents essential to the confirmation thereof.

12. That your Petitioners as such Committee have become and are liable to pay for the services so procured and that said payment will include compensation for all services necessary to be rendered hereafter on the part of the Committee to consummate the reorganization herein approved.

Wherefore, Petitioners pray that an order be entered allowing to your Petitioners such amounts as may be found reasonable for the payment of expenses incurred by Petitioners to City National Bank and Trust Company of Chicago for services rendered and personnel and facilities furnished to the Committee, for services rendered as Depositary and for the reimbursement of "out of pocket" expenses of your Petitioners as shown by Exhibit A hereto attached.

Charles S. Tuttle,
Albert J. Peterson,
Lewis W. Riddle,
William G. Sturm,
E. A. Kilmer,
as a Committee as aforesaid,
By W. G. Sturm.

Defrees, Buckingham, Jones & Hoffman,
Their Attorneys.

State of Illinois, } ss.
County of Cook. }

W. G. Sturm, being first duly sworn, on oath deposes and says that he is a member of the above Committee
228 and its duly authorized agent in this behalf; that he has read the above and foregoing petition, knows the contents thereof and that the allegations therein contained are true to the best of his knowledge, information and belief.

W. G. Sturm.

Subscribed and sworn to before me this 13th day of September, A. D. 1937.

Bethel W. Peterson,
(Seal) *Notary Public.*

Expenses Incurred by Bondholders' Committee Acting on Behalf of Holders of THE GRANADA First Mortgage Six Per Cent Real Estate Gold Bonds Dated September 1, 1928.

Printing		
TO—The Twentieth Century Press, for Printing 100 copies of the Deposit Agreement	$ 83.80	
TO—McCormick and Henderson, Inc., Call Letters, Letters of Transmittal, and Certificates of Deposit	131.20	
TO—Gunthorp-Warren Printing Company—50 Briefs C. S. Tuttle, et al., vs. Sam Harris, et al	21.75	
TO—Gunthorp-Warren Printing Company—50 copies of Supplemental Brief	9.25	
TO—Gunthorp-Warren Printing Company—Printing Appeal	89.33	$ 334.83
Mailing Expense		
Envelopes for 6-8-37 Mailing	3.93	
Mailing Certificates of Deposit to Depositors by registered mail	77.70	81.63
Miscellaneous		
Federal Revenue Tax on Deposited Bonds	145.80	
Telephone and Telegrams	15.90	
Binder for Duplicate Certificates of Deposit	3.80	
Rubber Stamp	3.15	
Certified Copy of Orders	9.00	
Chicago Title and Trust Company, Examination of title to include 8-4-33 $257.00 Refund 25.70	231.30	
Certified Copy of Petition	4.50	
Publication	17.55	
Appearance Fee	5.00	
Frederick G. Campbell, Clerk of U. S. Dist. Court of Appeals Estimated cost of printing the record together with clerk's fees	175.00	
Court Costs re: Appeal	25.00	
Transcript of Record	7.00	
Appeal Bond Premium	10.00	
230 Forwarded		$ 416.46
Filing Petition, Supreme Court	30.00	
Clerk of The United States Supreme Court—Printing record	230.00	
Oman and Lilienthal, Inspection of and preparation of Appraisal and Analytical Report	150.00	
Pam & Hurd, Attorneys, for legal services rendered incident to procuring resignation of Central Republic Company as Depositary, and appointment of City National Bank and Trust Company of Chicago as Successor Depositary	50.00	
E. A. Kilmer—Expenses in connection with attending meetings	15.10	
Marshal's fees	17.10	
Attorneys expense re Trips to Danville, Illinois	29.28	
Court Reporter	366.30	
Goldstein & Company, Certified Public Accountants, for preparing Statement of Receipts and Disbursements for period 3-22-34 to 5-1-37 and Statement of Profit and Loss (Accrual Basis) for year ended April 30, 1937	50.00	
Interest at 6% per annum to 9-13-37 on funds borrowed by the Committee	277.97	1,868.75
Total to 9-13-37		$2,285.21

231 And on, to wit, the 18th day of September, 1937, came the City Natl. Bank & Trust Co. of Chicago, as Trustee, by its attorneys and filed in the Clerk's office of said Court its certain Answer in words and figures following, to wit: Filed Sept. 18, 1937.

232 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—65811) * *

ANSWER OF CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE, TO THE COUNTERCLAIM OF WEIGHTSTILL WOODS, TRUSTEE IN BANKRUPTCY.

Now comes City National Bank and Trust Company of Chicago, a corporation, as Trustee, and pursuant to order of court entered herein September 14, 1937 files this its answer to the counterclaim of Weightstill Woods as Trustee in Bankruptcy, and says:

1. That it adopts each and every the averments contained in its report and account heretofore filed herein with the same effect as though the same were herein set forth in haec verba.

2. That it does not appear in or from the said counterclaim and the affidavit of Weightstill Woods in support thereof that the said Weightstill Woods has made due investigation of the matters and things stated and charged in his said counterclaim and accompanying answer and objections.

3. As to the matters and things averred in Section D of the said counterclaim this respondent denies that it and its counsel sought to serve conflicting interests and to act in opposite capacities; avers that at the time of the entry of the said decree and for a long time prior thereto
233 Granada Apartments, Inc., was the owner of the property in said decree described and not Granada Hotel Corporation, and as to the remainder of the averments in said Section D contained states that they constitute conclusions of law, answer to which is not required here.

4. It denies the allegations of Section E of said counterclaim and states that at all times during the period of its custody and possession it operated the said property with reasonable skill and ordinary diligence, put it and kept it in a state of repair, collected the rents, issues, income and

profits, and used them at all times to the best advantage of the bondholders. As to the period of its possession and as to the averments in respect of the renting of lobby space, it particularly refers to its report heretofore filed. During the period of its possession it kept proper books of account and it avers that it was under no duty to keep all of its records at the hotel premises. The records are those of this respondent as trustee in possession, and not those of the debtor company. It also kept, and there are available vouchers as set forth in its said report. The account of Central Republic Trust Company, its predecessor in trust, was made to and approved by the Court in said foreclosure proceedings. It denies that by reason of any of its acts the debtor has suffered loss and damage. As to the statutes relating to "waste" and the penalties therefor, it avers: (1) that obviously the acts complained of do not constitute waste within the meaning of the law; (2) that during all the period of its operation the debtor company was a resident of Chicago, Illinois, was entirely famil-
234 iar with the mode and method of operation and made no suggestions or complaints in respect of the matters and things mentioned by the Trustee, and is accordingly for that reason estopped, as is the Trustee in Bankruptcy, from complaining of such matters and things as well as for the reasons set forth in this respondent's report; (3) that the statutes in said Section E mentioned do not now constitute part of the law of Illinois nor did they at any time since the making of your respondent's trust deed; (4) that the said statutes are penal in nature and unenforcible in equity, and enforcible in any event only in a plenary and not in a summary action.

5. As to the averments contained in Section F of said counterclaim, this respondent states that it was appointed Successor Trustee by decree of the Superior Court of Cook County, Illinois and not by itself, as averred in said counterclaim. It denies that the bondholders had no knowledge or control over the change, and avers that the stockholders and creditors of Granada Apartments, Inc., were unnecessary parties to such proceeding and were entitled to no voice in the matter. It further avers that the Superior Court of Cook County, Illinois in said proceeding had jurisdiction of the parties and of the subject matter, and that its decree is free from collateral attack by anyone, including the Trustee in Bankruptcy. As to the remaining averments in paragraphs 7, 8, and 9 of Section F of said counterclaim, this respondent states that they present conclu-

sions of law not necessary to be here answered, as to all of which this respondent prays strict proof.

235 This respondent does not possess any funds belonging to the debtor company. The funds which the Trustee in Bankruptcy has demanded are those carried in its decree distribution account, representing the balance offset against the indebtedness found due it in the said foreclosure decree. Such funds do not belong to the debtor; they belong to this respondent. Any funds in the possession of this respondent at the time of the appointment of the Trustee in Bankruptcy herein were subject to the unpaid bills incurred by this respondent in the operation of the premises and were used as far as they would go for that purpose and with the consent of the Trustee in Bankruptcy. As noted in the Trustee's report herein they were insufficient fully to pay such bills, and this respondent has requested and again requests that the Trustee in Bankruptcy herein be requested to assume and pay such unpaid bills.

6. The Receiver's certificate of indebtedness in said counterclaim referred to was, and is, a valid and subsisting lien on the mortgaged real and personal property, the proceeds thereof and the rents, issues, income and profits thereof, prior to the lien of the bondholders, and any payments made on account thereof were in reduction of prior liens and charges and to the benefit of the bondholders. The provision reserving $8500.00 of net rents was inserted at the instance of your respondent's predecessor in trust and on demand of its attorneys so as to provide funds with which to pay the cash requirements of a plan of reorganization then in contemplation, but this respondent avers that such plan had been abandoned prior to the time of the payments on account of said certificate and that under

236 the circumstances it was more advantageous to pay the moneys on account than to hold them, and further avers that the provision was for the benefit of this respondent as Trustee. It denies that without right and authority it withdrew for itself and its counsel from funds of the debtor the said several sums at page 12 of the counterclaim mentioned, and avers that each and every the said sums were properly incurred and properly disbursed in the interest of the trust estate. It further avers that the management fees retained by it and by its predecessor in trust were fair and in amounts less than those customarily charged for similar service in the City of Chicago, County of Cook and State of Illinois at the respective times that the charges were incurred and paid.

7. This respondent was entitled by the terms of its trust deed to retain agents to assist it in and about the operation of the hotel premises. Among others, it retained Edward Hall, who necessarily performed services of a value far in excess of the amounts paid him by way of compensation.

8. The proceedings had in the prior bankruptcy cases against Granada Hotel Corporation and Granada Apartments, Inc., are a matter of record, to which this respondent prays leave to refer. The purpose of the mortgage trustee in opposing those proceedings is as set forth in its report. It had the right to oppose them on behalf of all bondholders, sound reasons for doing so ultimately upheld by the United States Supreme Court, and it denies the motives averred by the Trustee in Bankruptcy and avers
237 that by reason of the premises its motives, whatever they may have been, are beside the point.

9. It denies the averments on page 15 of the counterclaim contained that it had ample funds with which to pay the charges paid by the Trustee in Bankruptcy, and further states that such bills were a proper charge on the trust estate and should have been paid by the Trustee in Bankruptcy, and avers that it has fully complied with all orders of this Court and that it has extended full cooperation to the Trustee in Bankruptcy far beyond that requested by trustees in like cases. Further avers that at all times its actions have been controlled by a desire for a speedy reorganization and that to that end it surrendered possession to the Trustee in Bankruptcy herein, waiving its right to hold custody of the property notwithstanding the order of the Court, all of which fully appears from the proceedings and the record thereof in this cause. It denies the obstruction and evasive conduct by the Trustee in Bankruptcy mentioned and suggests that it heretofore voluntarily submitted itself to the jurisdiction of this Court, has not compelled the Trustee to resort to plenary proceedings and has put in a true and faithful account of its acts and doings as Trustee.

10. As to the amounts collected by it for heat, water and refrigeration furnished the Arlington Hotel and the reasonableness of the charge therefor, it refers to its report, as it does in reply to the averments in respect of valet service and lobby space.

11. As to all other allegations in said counterclaim contained not hereinafter nor in said report specifically admitted or denied, this respondent prays strict proof.

238 And this respondent denies that the Trustee in Bankruptcy is entitled to the relief in his said counterclaim demanded or any part thereof, and having fully answered prays that said counterclaim be dismissed with its reasonable costs and charges in this behalf wrongfully sustained.

City National Bank and Trust Company of Chicago,
By John J. Bickel, Jr.

State of Illinois }
County of Cook } ss.

John J. Bickel, Jr., being first duly sworn on oath, deposes and says that he is Assistant Trust Officer and duly authorized agent in this behalf of City National Bank and Trust Company of Chicago, as Trustee, respondent to the counterclaim of the Trustee in Bankruptcy herein; that he has read the above and foregoing answer by him subscribed, knows the contents thereof, and that the matters and things therein stated are true.

John J. Bickel, Jr.

Subscribed and sworn to before me this ..... day of September, A. D. 1937.

.....
Notary Public.

205 And on, to wit, the 18th day of September, 1937, came The Arlington, Inc., by its attorneys and filed in the Clerk's office of said Court its certain Answer in words and figures following, to wit: Filed Sept. 18, 1937.

206 IN THE DISTRICT COURT OF THE UNITED STATES.
(Caption—65811)

ANSWER OF THE ARLINGTON, INC., TO THE PETITION OF WEIGHTSTILL WOODS, TRUSTEE IN BANKRUPTCY HEREIN.

Now comes The Arlington, Inc., a corporation, and for answer to the petition of Weightstill Woods, Trustee in Bankruptcy herein, filed the 14th day of September, 1937, says:

1. It admits the averments of Paragraphs A, B, C, D, E, and F in said petition contained.

2. It avers that the amounts paid by it to the Granada and its Trustees for heat, water and refrigeration were in excess of the fair, usual, reasonable and customary charge therefor, and avers that it used such service and paid such amounts because of its financial inability until recently to provide its own plant for the furnishing of such service. It avers that the Granada is equipped with a plant especially designed to furnish such service not only to its own property but also to the Arlington and to the Lincoln Park Manor, and that the Granada has been and is furnishing such service at a substantial profit.

3. It avers that upon threat of the Trustee in Bankruptcy herein to discontinue service unless he was paid $1,000.00 a month, it recently paid the Trustee the sum
207 of One Thousand Dollars ($1,000.00) for the period ending September 15, 1937 on the written understanding that such payment was without prejudice and that the amount actually to be paid to or retained by the Trustee for such period would be fixed and determined by the Court. It further avers that it was required to, and did, install individual refrigerators in its said premises and that the Granada is not now furnishing refrigeration service. It is its intention to put in its own heating plant to provide heat and hot water. Pending the completion thereof it is ready, able and willing to pay to the Trustee in Bankruptcy or to his successor or assignee the fair and reasonable value of heat and water furnished by the Granada.

Wherefore, this respondent prays that the Court hear and determine the fair charge to be made for such service furnished and to be furnished by the Trustee in Bankruptcy and that it direct the continuation of such service by the Trustee until the completion of the said plant.

The Arlington, Inc.,
By C. S. Tuttle,
President.

518 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank and Trust Company of Chicago, individually and as Successor Trustee, etc. *et al.*,
Appellants,
vs.
Weightstill Woods, Court Trustee, *et al.*,
Appellees.

No. 6986.

CONDENSED AND NARRATIVE STATEMENT OF EVIDENCE.

519 Hearing before the Honorable John P. Barnes, September 21, 1937.

Present:

Messrs. Defrees, Buckingham, Jones & Hoffman, Represented by Vincent O'Brien, Esq., on behalf of City National Bank and Trust Company of Chicago, as Trustee.

Messrs. Mort D. and Frank Goldberg, Represented by Frank Goldberg, Esq.,

Weightstill Woods, Esq., Federal Trustee, pro se and also represented by Bertram W. Rosenstone, Esq.

The above cause came on for hearing before the Honorable John P. Barnes on September 1, 1937 at 2:00 o'clock P. M.

Mr. Woods: Mr. O'Brien has filed a petition here, your Honor. I presume it is up to him to proceed.

Mr. O'Brien: I don't know whether I call it a petition. I filed the Report and Account, if the Court please, of the City National, as Trustee. The Court will recall that on the appointment of the Trustee here, the Trustee under the indentures surrendered possession of the property and

in line with its action taken at that time it put in its account to this Court. The Trustee in Bankruptcy has filed a document here which is termed Answer, Counterclaim and Objections.

That instrument involves at least two things: namely, objections to the account of the City National and also an affirmative counterclaim on the part of the Trustee in Bankruptcy. I understand, according to the practice, that where objections to an account, trustee's report, receiver's report are filed, that those objections are to be established by the objector and that the same is true, of course, to the counterclaim, so it is my idea that in the proceed-
520 ing here Mr. Woods will go ahead and establish these objections, and I think that should be the order of the proceeding.

Mr. Woods: Well, this petition is not like an ordinary accounting of a trustee. They do no come with a detailed set of receipts and disbursements. They do not file here any vouchers at all. They have merely set forth specific items that they want this Court to approve and acquiesce in; and it is up to them to establish that their conduct with reference to those particular items is the proper conduct of the Trustee.

The Court: Well, I don't know about it.—I suppose the counterclaim or the evidence supporting the counterclaim ought to be put in by the objector.

Mr. O'Brien: It is all indivisible, your Honor. There is not anything here but the counterclaim. There is not any questioning of the Trustee's account.

The Court: I have got your point and I suppose it is a question of burden of proof.

The Court: After all, it is a burden on the counsel. Take a fifteen minutes' recess and we will find out what the law is.

The Court: But I am going to rule you to produce the officers of your client for cross-examination if the other side wants to cross-examine.

Mr. O'Brien: On the other hand, if the Court please, I am entitled to rely on the objections which are made and that is why I am here to make them. That is what this is about.

The Court: You rely on this case and we can shorten this lawsuit very materially. Do you want the of-
521 ficers of the client produced?

Mr. Woods: I do, your Honor.

The Court: I say I am going to let you ask all about that. Whom do you want to examine?

Mr. Woods: You take the stand please.

Mr. Woods: This is Mr. Hubbart, your Honor. He is one of the officers of the City National and has charge of this—

The Court: You are proceeding under your right to cross-examine?

Mr. Woods: Yes, sir.

Mr. O'Brien: If the Court please, I would like the record to show an exception to the Court's ruling and exception to the cross-examination of the witness.

The Court: I am saying if you are absolutely sure, Mr. O'Brien there is a way to shorten it, that makes the question very simple if you want to.

Mr. O'Brien: Well, that is not the point, if the Court please. I came here on these objections. If it is the Court's ruling—I see no relevancy of that question but if the Court wants to know about these things, as I assume it does, I am prepared to go into that but in doing so I don't want to waive my position or the right to have the Trustee assume the burden of establishing these objections.

Thereupon, J. ROY HUBBART, called as a witness, was examined and testified as follows:

Cross-Examination by Mr. Woods.

My name is J. Roy Hubbart; I live at 3504 Lake View, Chicago. I am an employee of the City National Bank
522 and Trust Company and have been employed there since November 30, 1932. The general nature of my duties is the supervision and management of hotels, apartment hotels and furnished apartments, under the supervision of the Trust Department of the Bank.

My direct superior officer is John J. Bickel, Jr. and in his absence I have reported to Mr. Leonard who, I believe, is the Trust Officer of the City National Bank and Trust Company and has charge of the Trust Department.

Prior to May 17, 1937 I had charge with the Agent of the operation of this Granada property. By agent I mean Mr. Ed Hall, who acted as agent for City National Bank and Trust Company. Both of us had a hand in the management. Mr. Hall spent more time at the property than I did and I relieved occasionally the resident manager. Both of us were signing checks.

The moneys which came out from the rents of this property were deposited in City National Bank and Trust Company in the commercial account, and I checked current monthly purchases against that account. Whatever surplus of money there was at the end of each month in the operating account was transferred to City National Bank and Trust Company, as Trustee in possession. After such transfers at the end of each month I did not sign the checks any more and I had nothing to do with the money. The records with reference to what was done with the money were kept by the Trustee in the Bank. The records at the hotel only showed the operating up to the end of the month except that the monthly audit of the operation showed those transactions. It showed in the monthly audit and showed in the books of the hotel. After the end of
523 the month the surplus was kept in the Bank and it is not reflected in the books of the hotel but in the monthly reports of operations. The next month we would see in the operating account what was done with the money that had been placed in the City National.

I came to your office about May 18, 1937 and we had a conversation. I believe I went to your office on your invation and told you I would cooperate in every way to assist you. We discussed the matter of turning over the operation of the property and the money. I told you that the usual procedure in such cases had been to pay such bills as were due from the funds still on hand in order to turn over the property to you without any of these current obligations. You made the statement that you understood that all moneys were to be turned over but that you would look into the matter. I am not sure whether or not you got out the order of the court and read it to me. I reported to my superior that I had visited with you and had a very pleasant conversation.

Certain operating bills that were left at that time were paid with your approval and there were certain bills unpaid. You called me later and asked me about those bills that were unpaid.

I have not signed any checks to pay them. I think I learned of your appointment as Trustee in this case immediately after the notice was received by my superior on May 17th. The receipts for the business up to and including the 17th were deposited by the resident manager through Brinks' Express Company in the City National Bank and Trust Company. I did not have anything to do

with that particular transaction. I did not go up there
524 and ask that that money be sent down. I did ask that the house money of $400 be sent down. That was not in the day's receipts.

If you read the order of your appointment to me in my office it was after the 17th. The money was taken over before I saw you. I think I was in your office on the 18th. The money was taken down the 18th later than 2:00 o'clock when I was in your office. I believe the $400 was brought down prior to 4:00 o'clock on the 18th because the deposit slip in the commercial account and was used for part of the checks made out for bills which you O. K.'d.

The balance now in the commercial account is $200 and, I believe, 20c, due to the fact that one check for $188.55 which was drawn, I believe with your sanction, by Mr. Parker, signed by Mr. Hall and delivered to you, is still outstanding so we necessarliy can not close the account.

I am familiar with the engineering set-up in the basement of the hotel. I have inspected the refrigeration system down there. I mentioned to you that it was antiquated, the piping was bad. The piping is ready for discard. The rest will last a long while, a great deal longer than the piping in the brining system. I am not officially an engineer, I am simply through my practical experience in operating property for 30 years.

There are two brine pumps in the property for pushing the brine around through the refrigerators. I believe that one of the pumps has not been in operation for sev-
525 eral years. I could not say when it was last operated.

Brine pumps are usually used in a dual capacity. The shafts give out very frequently due to corrosion, and in the case of those brine pumps they have been repaired many many times. I could not say the last time I had any repairs made on either of the pumps. I believe that at the time I took charge of the property only one of the pumps was in operation. I did not tell you that the system was about gone. I never mentioned the pump. It was not necessary to have the pump repaired. There were two pumps and if one gives out the other can be used. It can be repaired in a short time. It is only for circulating the brine and it does not run the compressor. If there were only one pump and that were bad, the whole system would temporarily stop. It might be a very few hours to repair a pump. I don't know how long the pump was left in that condition because pumps were repaired, from time to time, first one and then the other. I can't say when the pump was repaired.

I never heard of the room on the lobby floor called the "directors' room." I remember the room where I saw you one evening with Mr. Hall and Mr. Parker. I know the room you are speaking about. It opens off the lobby. It is approximately 15'x30'. It was the manager's office. There are two or three other offices there used in the bookkeeping. This room was needed especially for the manager, more needed in its condition than the others were.

There is the office for the clerks in front which would be no place for the manager. Behind that there are two small offices, not appropriate for a manager's office
526 in a building of that type. I did not consider that space rentable. I never made any effort to rent it because we did not consider it rentable. It would not make a satisfactory doctor's or dentist's office. I have not heard of doctors and dentists having offices in a hotel. Not offices, no, in the lobby of a hotel, the odors of medicine, anesthetics.

There is no commissary in that building. I do know of a reason why a commission should not be over there in that room, because I would never consider it profitable.

There is a ball room space also opening off the front of the lobby of that hotel. It is approximately 33' x 66'. It has a small kitchen attached to it. It is rented from time to time by different organizations, women's clubs. I did not make any effort to get any permanent tenant in that space.

There are two rooms on the other side of the lobby. A large two-room space about 26' x 36'. It was used by the guests and for their benefit. The lobby is of considerable size. At least 20' x 60' or 70'. I did not consider that ample space for the guests in the hotel for the purposes for which the salarium was being used. The salarium was being used for an amusement room. Furthermore, in connection with any arranging for commercial space, there are four levels in that lobby. The floors are marble. There is a level on the first looby inside the vestibule. Four steps there and to the left of that you enter from the vestibule and there are four steps leading to the ladies' retiring room, toilets and men's smoking room, toilets, which are on the front of the building. There are four steps in succession, just one level. The next level
527 goes up two steps. That is just beyond the clerk's counter and the stairway going to the upper floor. Starting from the elevators at the back of the lobby you

have a place there around the fire place, on the higher level, but I don't think that it is quite as large as 30′ x 40′, possibly 25′ x 40′. I have not figured whether or not the main lobby is about 30′ x 50′ or 60′ so I can't say. I never measured it. It is approximately 30′ x 60′.

The vestibule and entrance there have a space not as long as 30′ x 40′. I would say it is about 20′ x 20′. I am referring to a space beyond the first inside level before you reach the steps. There are first the steps to the lobby, then the second level, third level and fourth level. All that is open public space and is in addition to the space you have asked me about in reference to renting.

During the period I have operated this hotel I collected from the Arlington property across the street for heat and hot water and refrigerator service $600 a month. I did have something to do with determining that sum of money. I objected to it from a fair standpoint when I found the Arlington paid as much as they did. They were paying $940 a month, I believe, but this reduction to $600 was not entirely on my objection. At the same time I was operating the Arlington property. From January, 1935 the City National Bank and Trust Company was Trustee of the Granada. I had nothing to do with it before that time as Trustee in possession, but only in a supervisory way or a casual way. I have had to do with the Arlington Hotel since the end of December, 1933. I brought out that the amount charged the Arlington
528 was too great and an investigation was made and as a result of that a contract was signed reducing the amount the Arlington paid to the Granada. I did not sign the contract. I have seen a copy of it. I think you were furnished a copy by our counsel. I did not prepare any such document. It is my conclusion that the document changed the rate from $940 to $600 a month.

The Court: What is the name your Bank?

Mr. Woods: The City National Bank & Trust Company.

The Witness: The City National Bank & Trust Company.

The Court: How long have you been Trustee—under the mortgage of the Granada, I mean?

Mr. Woods: They claim, your Honor, they had a
529 court order appointing them in January, 1935.

The Court: Prior to that what was your relationship to this other building?

The Witness: The City National Bank and Trust Company was Trustee in possession.

The Court: When was the rate— What was this for? Heat, what is it for?

Mr. Woods: Heat, hot water and cold water and refrigeration.

The Court: When was that reduced?

The Witness: Reduced in 1933 or 1934, pardon me, I think it was in 1934. I will have to look up the records.

The Court: Did you give any consideration to restoring it after you took over the Arlington—after you took over the Granada Apartments?

The Witness: No sir.

The Court: Did not consider it at all?

The Witness: Never have.

Mr. Woods: You say that change—

Mr. O'Brien: Just a minute. Mr. Reporter, read the Court's question.

(The record as above recorded was read by the reporter.)

The Court: "To restoring" after you took over the Granada Apartments, Inc.; never at all?

The Witness: I said no.

The Court: By the way, the Arlington building was distressed too, was it?

The Witness: The Arlington building was in de-
530 fault on its bond issue.

The Court: Any Bondholders' Committee in connection with them?

The Witness: There was, yes.

The Court: Who was that?

The Witness: I have not the names.

The Court: Do you know?

The Witness: I know part of them.

The Court: Well, was it a different set of men than the Committee with the Granada Apartments, Inc.?

The Witness: They were not all the same.

The Court: Well, don't they interlock in some way?

The Witness: Some were on both Committees.

The Court: Well, who?

The Witness: Mr. W. G. Sturm; I believe Mr. C. S. Tuttle; I am not sure as to the others.

The Court: Mr. Tuttle is an officer of the Bank?

The Witness: City National Bank and Trust Company.

The Court: City National Bank and Trust Company. And Mr. Sturm, who is he?

The Witness: He is an officer of the City National Bank and Trust Company.

The Court: Any other individual—?

Mr. Woods: I think those two, your Honor, are the only ones on both Committees.

The Court: Who were the other members of the Committee? Were they officers of this Bank.

The Witness: Not all of them.

Mr. Woods: I have the names if your Honor wants them. For the Arlington property Committee, Mr.
531 Lucius Teter, C. S. Tuttle, W. G. Sturm, Arthur T. Leonard, and John J. Bickel, Jr.

The Court: Are some of those in the hearing today?

Mr. Woods: Mr. Bickel is this man's superior, and Leonard is Bickel's superior.

The Court: Mr. Teter has never been in here. Has he ever been an officer of your bank?

The Witness: Not of the City National Bank and Trust Company.

Mr. Woods: Who were the Committee for the Granada Apartments, Inc.?

Mr. O'Brien: It is an Illinois corporation.

The Court: It was not—

Mr. O'Brien: I think perhaps it also had power to furnish light and refrigeration.

The Court: They are a tenant of the corporation.

Mr. O'Brien: That is problematical. The members of the Granada Committee are Albert Peterson; Kilmer.

The Court: Who are the gentlemen? Tell me who they are.

Mr. O'Brien: Peterson is a real estate man from Peterson & Halvorsen; Louis Riddle was formerly President of the Republic Trust Company; Kilmer is a banker in Indiana; and Tuttle and Sturm are the other people.

The Court: Go on."

There was an excessive amount of public space in the Granada Building. Consideration was given to the use of excessive public space in every building. This building in the first place was zoned against commercial business,
which eliminated any business that might pay rent
532 that would be profitable. The expensive alteration of the property would be a very considerable amount. I do not know what could be put in there that would be profitable regardless of profit. A restaurant might be put in. I don't know of anything else. You cannot put in anything that the city ordinance would not permit. We give consideration to that question in every building we go into. We did not try to rent this for a restaurant be-

cause we did not think it would be of profit to the building. Practically all the apartments in that building were kitchenette apartments; people occupying such apartments are not the type that would patronize a restaurant. We did not advertise it. We did not list that space with any real estate agent and try to get a tenant. People who live in kitchenette apartments eat out but not in the building in which they live. I have experienced that in many cases.

"The Court: Well, of course there are other buildings and people live in them. The way to find out whether a restaurant would be profitable is to seek them."

The Witness: There are possibly about 1000 people in that neighborhood living in other buildings. The reason why that would not be a good prospect for a tea room in this building is because there are two restaurants within a block—half a block of the Granada. One of them has changed hands a good many times. There is not a restaurant in that block because the street is zoned against any commercial business having the entrance on the street. There is a limitation in the use of the ground floor space through city ordinances. I do not know of any business that would be of advantage to the property that would be profitable. As to trying to get any business there I acted on that from—on the basis of my experience in operating other properties and I live in the neighborhood.

533 "The Court: You made up your mind that that was just a dead loss of space and would have always to remain so, did you?"

The Witness: It was arranged as the center for that community of hotels. From my knowledge of living in the neighborhood for five years, I would say it was a dead loss. One of the restaurants up there on Clark Street changed hands many times. These are very cheap types of restaurants and so is the neighborhood.

These people eat many places when they go out, very often at a distance.

With the exception of one year, I believe 1929 and 1936 (part), the taxes on the Arlington property were paid up. The tax load on the Arlington and on the Granada is entirely different. They are both in the same business, they have the same management, they have about the same occupancy—the difference is that one property is much more valuable than the other and the tax is very much heavier. The tax is much heavier in proportion to the number of apartments. There is a difference in the size

of the building. You have a much greater frontage; you have a large space there that is used as a park for the tenants. Part of the difference is due to the past history of the properties, the earnings of the properties. Relative to the Granada, I have never checked whether or not the Arlington has made any more money than the Granada. The percentages of occupancy and the percentage in rates very much the same as they have in the past.

As to the matter of the change from $940 to $600 in monthly charge to the Arlington. I have a copy of the contract that was entered into between the Granada
534 Apartments, Inc. and The Warren-Hart Apartment Building Corporation covering that. My recollection is that the amount of $4080 of accumulation for the 1933 was not paid. They refused to pay. I said the amount was excessive and that it was investigated and an accountant's figure was secured from experts. It isn't a fact that pressure was put on to force it through.

"The Court: Do you call the Arlington—you call the Arlington, what is this other building?

Mr. O'Brien: The Arlington Hotel.

The Court: Are those bonds all held by the public?"

The Witness: They are. They are scattered. I am not familiar with them, I only have the management there.

"The Court: Are all of these Granada Apartments, Inc. bonds held by the public?

Mr. O'Brien: Yes, with the exception of a small amount of the first covered by the—

The Court: What?

Mr. O'Brien: A small amount, six thousand or five, not very much. The second is—no bonds."

The Witness: I believe a valet tailor shop is in the basement of the Granada. It has been there all the time I have managed the Granada. The Granada received a commission from all the business done by the valet. The amount received was the amount that was done for the Granada. The valet was serving guests of the Arlington and anybody else that he could get. The commissions, so far as the guests of the Arlington was concerned were paid to the Arlington. The guests gave the business secured from the hotel, and the business was handled by the hotel in their accounting. The Arlington did not furnish any space to the tailor. I have considered whether it was
535 improper for a trustee operating two properties, one of them furnishing space to a tailor to take the commissions on the business of the building across the street

and paying it to that building, when the Granada was furnishing the space and the service to this tailor. As to whether or not it was proper, the tailor shop in the Granada has been operated as a convenience to the guests of the Granada; its business was not heavy and any business that he could secure from any outside source would be of benefit to him in operating his shop. Many hotels operate shops that way. Others have their work done by various cleaning and pressing concerns and all receive a commission for it. It was perfectly proper to do that because they could secure the same commission from some other source if they had his work done elsewhere. It was to assist him in keeping the shop open for the benefit of the Granada.

The amount so paid to the Arlington during the years 1934, 1935, 1936 and 1937 ran over fifty odd dollars and eighty odd dollars a year. It was approximately $250 for that period.

"The Court: Who handled the money?

Mr. Woods: The method of business, your Honor, was for the charges to be made in the hotel office; that is the hotels have a receiving room and everything that comes in to any guest is charged on the books at the hotel office, and that was done with reference to this valet. Monthly the valet would send a bill to each hotel office for his charges; the hotel would then take out its commission and pay him the difference and they collected from the guests."

The Witness: We did not charge this tailor any direct rent. He had no space at all in the Arlington. He occupies the space under that solarium, which is probably twenty-five feet square. I don't know that that space
536 is of any rental value particularly. I understand you have rented it now for $25. a month and eliminated commission, which about offsets the commission we were getting before. I doubt if it is worth $25 a month because I don't think the man will stay there very much longer. We took the commission on the business done and had him stay there for the benefit of the guests and get quick delivery. We did not pay to the Granada any of the commissions which were collected for the business because the Granada was not entitled to it. We had charge of both funds and retained all that money for the Arlington because it belonged to it. That was my thought about it.

There was an incinerator in the building. At different times I have inspected that incinerator, the last time was along early this year. It has been repaired a number of

times and we did not feel that we had the money to rebuild it. We endeavored to get along with as little expense as possible on it. It was given attention but it was not rebuilt. There were repairs made to the brick work occasionally. I have not a record here of when there were any such repairs made. There were charges made for those repairs at times when those repairs were made by the employees. As far as I know, no money was spent on repairs to the incinerator by outside parties except for a certain amount of material. I could not say how often I did look at the incinerator during the period I was managing the Granada. I did not have any contractor or other person examine it to see what the cost of repairs and replacement would be. Mr. Hall may have secured somebody. I do not know whether he did or not. As far as I know it was not done during my management.

537 Thereupon JOHN J. BICKEL, JR., a witness being duly sworn was examined and testified as follows:

Cross-Examination by Mr. Woods.

My name is John J. Bickel, Jr. I live at 10437 Hale Avenue. I am an Assistant Trust officer of the City National Bank and Trust Company. I have been connected with the City National Bank and Trust Company since its organization, since October 5, 1932. Prior to that time I was with the Central Republic Trust Company, and prior to that I was in the contracting business until 1928, and prior to that I was with the Central Trust Company of Illinois.

The Central Republic Trust Company functioned until William L. O'Connell was appointed receiver. I don't recall that date, I think November 21, 1933 was about the right date. It was after the City National was organized and the Central Republic Trust Company ceased to be a bank of deposit. I am Mr. Hubbart's superior. His activities with reference to the Granada property are under my direction.

I knew about this reduction of charge for the services to the Arlington from $940 to $600. My opinion and, and I think we can demonstrate that my opinion is correct from engineers * * * disinterested engineers' testimony, the figure of $600 a month, which was paid by the Arlington to the Granada is in itself excessive and at the time

that adjustment was made and a new contract entered into between the Warren-Hart Building Corporation and the Granada Apartments, Inc., our advice as employees of the Central Republic Trust Company was that the
538 figure set should be one that would be beyond attack and, if anything, should be more than the services were really worth.

"The Court: Why? Why was that?"

The Witness: Because we felt at the time that perhaps some time someone would question the amount that was paid due to the dual relation of the two properties. At that time the Central Republic Trust Company was Trustee under both mortgages, although not in possession of both. That figure, in my opinion, and I think that can be supported, was at least $75 a month too high.

I am a graduate architect. I advised the figure based on calculations which we have made ourselves and which we have caused to be made by a disinterested engineer, and on certain fee reduction in the Granada and the amount of money necessary to build a boiler plant in the Arlington, and have checked those figures against the actual costs in the Granada for the three properties. You notice, your Honor, that the Granada heats also the Lincoln Park Manor as well as the Arlington and that there is a very complicated heating arrangement there; one set of pipes goes under an alley and another set goes under a street from the Granada.

"The Court: By the way, did you unite there three properties under one management?"

The Witness: One of the properties is under state court receivership and has been, I think, since 1932.

I am on the Committee—the bonds are deposited. It is in the District Court.

"Mr. O'Brien: The owner is an individual.

The Court: Who?

Mr. O'Brien: Mr. Gehn through a foreclosure years ago.

The Court: Is there any equity in the building."

539 The Witness: I doubt if there is any equity in any of them. I am not a member of the Bondholders Committee on the Granada. I was on the other two. My company was Trustee in all three. There was consideration given to the desirability of uniting those buildings under one management as a result of reorganization. I think we have talked about it in the shop a number of times and the job seemed insurmountable due to the taxes and every-

thing. The furniture situation of the Lincoln Park Manor is different from the other two.

"The Court: I have seen those insurmountable things. Go ahead."

The Witness: I said I had an engineer make an investigation of this change of charge to the Arlington or the Granada. There was an engineer made figures. That was at the time the contract was changed. He made two reports. He made one in 1929 or 1930 and another one at a later time, I believe 1932 or 1933, in which he revised his figures. His name was Lewis. It is hard to say whether or not both of these reports of Mr. Lewis' were based upon estimates of costs and not upon actual operations. He used in his payroll actual costs within a few dollars. They check with the audit of this company within a few dollars. I do not know whether he said that and I do not know whether it is a fact that when he made his report in 1933 that he stated that he would much rather have actual audited costs than to have the figures that were furnished to him.

"The Court: Why didn't you reorganize this property, and get it out of court years, probably, ago?"

540 The Witness: We did not have enough bonds. We had 45%. The deposit has always been very low. I have not been on these committees. I know the committee has had many many meetings trying to get it out of court. I did not try it.

"Mr. O'Brien: We got it in here.

The Court: What?

Mr. O'Brien: I say we got it in here.

The Court: Well, but you didn't get it in here until about three years too late, that is what I am complaining of. Why didn't you get this building out of court before three years ago?"

The Witness: I am in charge of the operation of the properties, I cannot answer that.

"The Court: Who can answer that? Now I want somebody from the bank to tell me why they did not get it out of court three years ago."

"Mr. Woods: I think Mr. Leonard can answer that question, your Honor."

"The Court: Also I would really like to know why you did not try to put those three buildings together. It seems to me that would have been a constructive job for a banker. Have somebody tell me that.

Mr. Woods: Do you mean in here, too late now, your Honor, if these people want to?

The Court: Oh, well, I am not looking back. I think that would be a nice job for some banker to refer to.

The Witness: The Arlington is all finished and reorganized.

The Court: It has not any heating plant and no refrigeration plant—that is a nice job for some banker to refer to.

541 The Witness: It has refrigeration now."

I don't recall that you and I had a conversation the day you were appointed. I was advised by our counsel on that day you were appointed, but I don't recall I had a conversation with you until the next day or several days following the actual date of your appointment. You probably asked me to turn over all the money which the City National Bank had with reference to this property and to turn over all papers and documents pertaining to this trusteeship.

(Whereupon an adjournment was taken until eleven o'clock A. D. September 22, 1937.)

542 Met pursuant to adjournment, 11:00 o'clock A. M., September 22, 1937.

JOHN J. BICKEL, JR., resumed the stand and further testified as follows:

Cross-Examination by Mr. Woods.

(The witness indentified Court Trustee's Exhibit A for identification, being letter dated June 1, 1937, from Court Trustee to City National Bank and Trust Company, individually and as Trustee, and others, requesting certain documents and moneys which may be shown to be due from audit being made.)

The Witness: I have received a copy of letter dated June 1, 1937, marked Court Trustee's Exhibit A. I caused an examination of our files to produce what documents we had that were listed on this letter and those were turned over, I believe, to Mr. O'Brien, and there after to you. I think all moneys and documents have been turned over through our counsel.

(COURT TRUSTEE'S EXHIBIT A was offered and received in evidence.)

The Witness: The documents that were turned over to Mr. O'Brien were all the documents that we could find that were requested in your letter that we had in our files.

I think at later dates during the summer you requested me to turn over any funds which I had. I said that the funds of the operating account had been turned over with the exception of some eleven or twelve dollars that left the commercial account open due to an uncleared check which you were holding. We did not have any money left except that small amount.

(The witness identified Court Trustee's Exhibit B, being account of City National Bank and Trust Company, 543 as Trustee, containing summary analysis of cash accounts from January 4, 1935, to May 17, 1937, relating to the Granada Apartments Hotel.)

The Witness: That is our account made by our auditors after you were appointed trustee.

The reason why I waited until August 25th to turn over the moneys to the Court Trustee was that you had held certain operating bills that we had been led to believe would be paid and I wanted to have the entire account with all bills paid, with the exception of a few that we knew we would not have the money to pay and hoped that you would release the check, so that the small balance of twelve dollars could be turned over, so that the entire amount could be prepared, cleared at once, without any hang-overs of uncleared checks, and only the operating bills to the extent which we did not have the money to pay them.

I don't know whether you have ever said that you would pay them or not, but in other cases such unpaid obligations as were left at the end of the period were paid by the successor trustee, without question.

The statement you make that when you first talked to me about the 18th of May, I insisted that I would not let you pay any of our bills; that I was going to see that the parties from whom I made purchases were paid and I was not going to allow you to have anything to do with my merchandising bills, and that I insisted on paying them myself up to the 17th of May, is not an accurate statement of fact. In the first place, you did not call me on the 18th of May, and in the second place I told you we would pay the unpaid obligations to the extent of the cash on hand. The only reason we did not pay these bills 544 is because we did not have sufficient money to pay all of them.

Referring to Exhibit B for identification, in which it

says "Balance at end of Period," I believe our auditor made a correct audit when he put those figures down. It shows an amount in a decree, distribution account, which our counsel has advised we could turn over here on separate order, and we have followed our counsel's advice on that item. Also a small item in the interest account of eleven dollars, on which the same advice was given to the mortgage trustee by its counsel; and you were so advised.

As to the order entered by Judge Barnes on May 17th to turn over money and property, the interpretation of the orders is left to counsel by the mortgage trustee and not to me as an individual, and I follow the advice of our counsel implicitly.

It is correct that on August 27th you came to my office with that account which our auditors had made and with a copy of the order of the court and read to me the order of the court directing me to turn over everything that I had on the 17th of May. I did not say at that time that on advice of counsel I would not obey the order of the court. I said on advice of counsel we were awaiting a separate order on turning over of these two separate items.

"Mr. O'Brien: Oh, if the court please, I object to this examination, argument.

"The Court: I am interested in this; this is not the first time I have seen trust companies who did not obey court orders. I just want to get their mental attitude."

The Witness: I knew you were temporary trustee.

545 Our counsel has advised that neither of those two items which you mentioned are proceeds of the property. They demand a special order for their disposition; they are not properly a part of the debtor estate unless a separate order is entered. I don't think the order is clear on that point. I do not now refuse to turn over this money upon our audit and this order, if Judge Barnes entered an order that we turn it over.

"Mr. Woods: Well, here is the order. Do you refuse on this order and that audit to turn over the money?

"Mr. O'Brien: That is objected to, if your Honor please. He is arguing with the witness.

"The Court: He may answer that yes or no.

"The Witness: I think the answer to that is, we will still be guided by the advice of our counsel.

"Mr. Woods: You refuse, then, to turn over the money?

"The Witness: I did not say that."

(Whereupon COURT TRUSTEE'S EXHIBIT B was offered and received in evidence by the court.)

The Witness: I did not at any time examine the incinerator at the hotel. That is Mr. Hubbart's function. I did not know of my own knowledge whether it was in good shape or not.

I am familiar with the lobby space and the space adjacent thereto with reference to rental. My opinion of the lobby is that the spaciousness of it and the so-called ballroom, which is rented to women's clubs and other civic organizations, which brings into the hotel a very desirable class of patronage, of which many of them are prospects for apartments, contributes a great deal to the rentability and the income of the remainder of the hotel. The lobby is not waste space, but allows guests to mingle, to have card parties, a home-like atmosphere, that smaller lob-
546 bies in which anything commercial is admitted, completely ruined. There are only 114 units in this hotel. It is a family hotel. There are only 18 hotel rooms, and to attempt to commercialize a lobby of that sort I think would be suicide.

We have a plat of that space here. I think I am experienced in the operation of hotels. I think that the public space in that first floor is perhaps larger than I would certainly design if I were building a hotel. I think in this hotel the first floor space is excessive. If I were building a hotel of that size, that number of apartments, that many rooms, I think 25 per cent of public space on the first floor would be ample, including elevators. I think that amount would be practicable, I have figured it that way, but I guess it is probably pretty close to fifty.

I considered what I could do to remedy that condition. In the first place, as an employee of a mortgage trustee, it is our opinion, based upon advice of numerous counsel, that a mortgage trustee has no right to remodel property. I considered various theories on it, whether we had that right or not. This zoning ordinance is very specific as to what commercialization can be done on an apartment zoned street, there is no question about that. Then, if the street could be re-zoned, I have consulted with various operators of other hotels as to what commercial space, interior commercial space, in a hotel is worth. We operated a property, such a hotel, for a considerable length of time at Howard and Bosworth, the Broadmoor, in which the lobby had in it the rear end of stores, which fronted on Howard Street,

with very unsatisfactory results, in so far as both the stores were concerned, and the lobby; it is still unsatisfactory,
547 although we have nothing more to do with the property. I have never believed, and in the discussions we had concerning this property when we took it over, we decided and still believe that the lobby, while it is excessive, contributes to additional rentals that are derived; that the apartments rent at a premium compared to others in the neighborhood. The occupancy has been good. The people who occupy these apartments like this lobby. They go there because of the lobby.

I don't know how long the building has been in receivership. I think it has been in trouble almost from the day it was built. I don't have the figures as to the amount of unpaid taxes. The taxes are materially improved. There was a net income, a very substantial net income, which was used for both taxes and other lines.

(Mr. Woods stated that there were approximately $50,000 of unpaid taxes, including 1937.)

"The Court: About how much in fees have been paid, do you know?

"The Witness: No.

"The Court: Have you any idea?

"The Witness: No, sir.

"Mr. O'Brien: The unpaid taxes are thirty-nine thousand five, and there was paid on account of taxes out of income approximately thirty-three thousand dollars.

"The Court: Thirty-nine thousand and what penalty?

"Mr. Woods: Thirty-nine Thousand Dollars, penalties and taxes, and for 1937.

"The Court: It amounts to about what?

"Mr. O'Brien: Well, we have not computed that.

"Mr. Woods: If you include the penalties it will probably run to Sixty Thousand Dollars, your Honor.

548 "The Court: How much fees did the trustee who was in possession get?

"Mr. Woods: I have not seen any petition by them, your Honor. I looked at the record this morning. If they have filed any, it is not here.

"The Court: Have you filed a petition?

"Mr. Woods: The bondholders' committee filed a petition and the attorneys for the bondholders filed a petition for fees.

"The Court: I understood you to say—was I correct in my understanding, that you had to do with the management of the property?

"The Witness: Yes.

"The Court: You did not have anything to do with the termination of the trust?

"The Witness: No, sir. What do you mean, termination?

"The Court: Well, as trustee you are acting in a trust capacity, and it is your duty to do the best you can for the estate. I suppose, at least I would assume, that somebody who is trustee ought to consider the desirability of the termination of the trust for the benefit of the estate. Whose duty is it, in your bank, to consider those questions?

"The Witness: Termination, for what reason?

"The Court: The ending of it, so as to get it out of court, get it out of your hands and into the hands of the real owners.

"Mr. O'Brien: Mr. Sturm is the one, your Honor.

"The Court: Who is Mr. Sturm? What office does he hold?

"Mr. O'Brien: Vice-President.

549 "The Court: In the Trust Department?

"Mr. O'Brien: Yes.

"The Court: He is the man that determines that? That is not your duty, to give any consideration to it?

"The Witness: No, sir.

"The Court: Did you ever talk it over with Mr. Sturm?

"The Witness: My duty, your Honor, is to produce as much net income from the property as it is possible to produce.

"The Court: Suppose you had something in your hands as trustee or receiver and you see it is getting into a hole and staying there year after year; isn't it your duty to say something to somebody who ought to get this out of here?

"The Witness: Yes, if we have a property that is that bad I generally go to Mr. Sturm and tell him it is hopeless.

"The Court: Do you think that with this property?

"The Witness: This property is not hopeless. There has been a vast amount of money paid in taxes and on the receiver's certificates and on the furniture. This property produced real—

"The Court: Well, how much was paid on the receiver's certificates?

"Mr. Woods: There is a total of $7,500 paid on the receiver's certificates.

"The Witness: Receiver's certificates—

"Mr. O'Brien: The receiver of the property probably paid $5,000 and the City National paid $2,500 and $511.01, the certificate being reduced to approximately—

"The Court: You say the condition of this enterprise improved, taking into account the fees paid the trustee, receiver and counsel?

550 "The Witness: Yes, sir.

"The Court: You say it improved?

"The Witness: Yes, sir; no question about it.

"The Court: There is less tax due now than there was years ago?

"The Witness: The conditional sales contract was reduced from the time that the Central originally went in. When we took over the operation it was forty-three thousand.

"Mr. O'Brien: Nineteen thousand four.

"The Witness: Nineteen thousand; nineteen thousand, reduced to three. There was a total of $32,969.41 applied on taxes.

"The Court: How much?

"The Witness: Thirty-two thousand.

"The Court: Over a period of eleven years?

"The Witness: Well, from March 21, 1934, to the date of Mr. Woods' appointment.

"The Court: What taxes accrued; what taxes and penalties accrued during that period?

"The Witness: I don't have those figures.

"The Court: Well, you have to have them in order to determine whether it is better.

"Mr. O'Brien: They amount to about eleven thousand; the latter years, and as low as six.

"The Court: Well, you thought this property was improving, did you?

"The Witness: No question about it.

"The Court: That it was getting better?

"The Witness: The net income did improve, as did the gross.

"The Court: You did not talk to—what was the other man's name?

551 "The Witness: Sturm.

"The Court: You did not ask Mr. Sturm to terminate the trust?

"The Witness: No, sir.

"The Court: And start to getting it out?

"The Witness: No, sir.

"The Court: You have no idea that these bond issues, all being rehabilitated, paying even the taxes and paying back interest and reinstating the bonds—you had no idea of that kind, did you?

"The Witness: Taking, your Honor, all the decrees and reorganization proceedings from time to time, yes, I did. I asked what progress was being made. It would be general conversation in a shop of our kind; but as to suggesting we resign and call this hopeless, no.

"The Court: Did you consider getting it out of court and into the hands of the real owners, that is what I want to know?

"The Witness: Of course, that is not—that is something that Mr. Sturm—that is his job. My job is to run the properties.

"The Court: Do you know whether he considered that, or not?

"The Witness: Surely, he did, many times.

"The Court: Did he discuss it with you?

"The Witness: Just as we discussed other reorganizations, as to what progress was being made, generally.

"The Court: What can you say about that?

"The Witness: Well, that is,—it extended over such a long period of time I would be glad to give you what I can remember of it.

552 "The Court: Well, tell me what you can remember.

"The Witness: Well, I knew, of course, in a general way, of the previous involuntary action—

"Mr. O'Brien: Excuse, me, just a minute. If the court please, I have Mr. Sturm here. I understand—

"The Court: I know, but here is the man that managed the property and in touch with it and he thought it was getting along, but he never did anything about rehabilitating it. I want to know what they did toward getting it out of court.

"Mr. O'Brien: I wish to make this statement—

"The Court: Just wait. I am interrogating the witness. Just don't make any statement on the record until I get through interrogating the witness; then you can interrogate the witness.

"Mr. O'Brien: This last year—

"The Court: You heard what I said, sir. Will you answer my question?

"The Witness: Yes, I knew, of course, of the involuntary petition which ultimately was dismissed by the Su-

preme Court and I knew of this petition which I had heard would be—no doubt result in the sound reorganization—good title, rather; and from time to time would ask what progress was being made—

"The Court: There were officers of your company held sufficient bonds in their hands to make a valid proceeding in this court?

"The Witness: I don't think so. As to the amount of—

"The Court: Did you ever investigate that?

"The Witness: The amount of bonds deposited has always been low, yes.

"The Court: How many did you have?

553 "The Witness: I don't recall. I think it is in the neighborhood of fifty per cent, or less.

"The Court: Fifty per cent of the bonds?

"The Witness: Yes, sir.

"The Court: You did not consider whether or not you had sufficient bonds to make a valid proceeding in this court?

"The Witness: Your Honor, again, that was not my job. I was interested, but all my responsibility was getting the most out of the property.

"The Court: For whom?

"The Witness: For the bondholders, of course.

"The Court: Go ahead."

The Witness: Indirectly, through the application of the income to taxes and receiver's certificates and furniture contract the bondholders have had something out of the property in the last six years. No money has been paid on account of interest or otherwise since I have had to do with it. I took a very reasonable management fee.

It sometimes happens that a piece of real estate bought for a certain purpose has to be put to some other use because of a change of the neighborhood or something else.

I have told you, Mr. Woods, that in my opinion the lobby space where the solarium is, where the ballroom is, and the directors' room is not waste space. I do not believe that it could be used commercially. I did not advertise it nor try to get any tenants for it. My opinion is that it was useless.

"The Court: You also know that you were advised by many counsel that a mortgage trustee had no power to change it; is that your understanding?

"The Witness: I knew that, yes

554 "The Court: You also knew that the building ordinance would not let you, if you wanted to, did you know that?

"The Witness: No, I did not know it at the time, because that was not true at the time; the ordinance has been amended since that time.

"The Court: You also knew that space was very valuable because of the ladies who came in there and they might possibly rent apartments for themselves, you knew that?

"The Witness: They did rent apartments in the building and they paid rent for the ballroom."

The Witness: The total annual rental received from these ladies with reference to the ballroom space was very small. I think a thousand dollars a year would be high. I think it is used by them one afternoon a week during the winter months. I believe other organizations come in there and pay—if they are desirable—pay a nominal rent for it. I don't know how many other organizations have been in there during the year. Mr. Hubbart can tell you better than I can what is the rental of that space by the year, the way it has been rented.

"The Court: How much do you think it was?

"The Witness: I would be surprised if it brought in over seven or eight hundred."

The Witness: I knew about the tailor shop. I thought it was nothing unusual but perfectly proper, that they were paying commissions to the Arlington, although the Arlington furnished him no space. Under the circumstances, I think that a trustee in a fiduciary capacity with respect to these two properties should do that sort of thing.

I did not know that one of the brine pumps had been out of commission for several years. I had been in the basement, but all of those problems are under Mr. Hubgart's management. Whether or not the pump was
555 usable or not I left entirely to Mr. Hubbart.

I am not familiar with an operating contract whereby any business that the Central Republic Trust Company had that was worth anything would be shifted over to the City National. The City National Bank and Trust Company of Chicago began furnishing service for the Central Republic at the time the Central Republic went into possession. The idea of the trustee going into possession was to remove it from the receivership and save considerable fees.

"The Court: And prevent the bondholders getting it into a 77B proceeding, wasn't it?

"The Witness: No, sir.

"The Court: It was not?.

"The Witness: No, sir, I don't think so.

"The Court: Did you ever hear that, sir?

"The Witness: To prevent the bondholders?

"The Court: Yes, sir.

"The Witness: No, sir.

"The Court: Nobody ever told you that you could just get a trustee in possession and the bondholders could not reorganize; they never told you that?

"The Witness: No, sir; quite the contrary. It was all hoped in the decision that a good, valid means would be found of getting it into 77B.

"The Court: You were searching for means, were you?

"The Witness: Well, that meant, I am telling your Honor that conversation.

"The Court: Did you ask counsel to advise you whether or not it could get in?

"The Witness: No, sir, I did not, no, sir.

"The Court: Do you know whether anybody else did that?

556 "The Witness: I presume Mr. Sturm did."

The Witness: When the City National Bank took over this property formally on the record, in January, January 3, 1935, the same personnel took it, doing the same thing. We knew that the accounts of the Central Republic Trust, which was formerly on record, were correct. I don't know what more checking we could do than prepare them.

I have heard of a case called Harris *vs.* Tuttle. I heard that it went to the Supreme Court of the United States. I understand that the bondholders' committee prevailed in that. I don't think it is a fair statement to say that the bondholders' committee defeated this court getting control of the property. The court found that the petition was not a good petition. I am not on the Granada Committee and did not have anything personally to do with it.

The disbursement made for paying the fees with reference to that proceeding was not made by me. I think Mr. Sturm could testify as to that disbursement. I signed the petition which is here, objecting here before the court.

(Mr. Woods handed witness copy of petition and directed his attention to paragraph 21.)

The Witness: It is right that I swore to that petition.

(Mr. Woods handed witness a transcript the record and the briefs in case No. 5488, United States Circuit Court of Appeals for the Seventh Circuit, and asked witness to point out to the court, if he could anywhere in that record that the City National Bank and Trust Company was a party to it.)

The Witness: Mr. Woods, this petition was drafted by our counsel. I executed it as an officer of the bank, and, as I told you yesterday, I am not a lawyer; and I think that there are other officers of the bank that can give
557 you the testimony that you want, give you the answers to the questions you want.

"Mr. Woods: Well, you know whether A is a party to a lawsuit or not, don't you? That is just a plain fact; the name is there or it is not there; you don't need any legality to that, do you? People don't get into lawsuits by just some mirage or some atmospheric transaction, do they? That is not a matter of thought; it is a matter of fact. Do you see the name of the City National Bank and Trust Company anywhere on those papers

"The Witness: Well, I don't see it on the cover.

"Mr. O'Brien: Well, I object to that, your Honor.

"The Court: He may answer.

"Mr. Woods: Then it is not there?

"The Witness: I don't know whether it is there or not.

"Mr. O'Brien: Whether the name appears on the cover—

"Mr. Woods: Then you signed that petition without knowing whether or not the City National was a party to the transaction, or not?

"The Witness: Well, I have testified to it correctly, and why I signed the petition that was presented to me by counsel."

The Witness: I had the petition before me an hour and a half. I signed it on the 27th. My recollection is that the petition came in after your visit to Mr. Leonard's office. Mr. Leonard and I read it over. I don't believe that the petition says that the City National Bank and Trust Company carried on that litigation.
558 (The witness examined the document handed to him.)

The Witness: I don't believe that the bondholders' committee conducted that lawsuit. It is not in there. I had nothing to do with paying the fee for that lawsuit. Mr. Sturm handled that personally.

As to the receiver's certificate, I said that amounts had been paid on the receiver's certificate; and again, counsel has assured us that this was a lien that had to be discharged along with other liens and along with the unpaid balance on the furniture.

City National Bank and Trust Company of Chicago was trustee under the trust deed securing the real estate. I am not familiar with every paragraph in the indenture and do not think I can find a clause that tells the trustee to buy personal property or to pay receiver's certificates for personal property. I would ask counsel about that. I did ask counsel. He said that payment of the furniture must necessarily be made or it would be removed and that the receiver's certificate was a lien. I did not ask him to point out any clause of that trust deed that enabled a trustee of real estate to pay for personal property. I did not ask him to do that. I did not ask him why I had the authority and duty to make the payments. I did not ever inquire as to whether the bondholders had already bought that personal property when they paid for their bonds. I did not get a copy of the bondholders' prospectus to see what was included in the sale of bonds to the bondholders. I had no connection with the underwriting corporation and I did not know. I did not inquire whether I was paying for the property twice or not. On the
559 advice of counsel I paid it. The same thing is true with reference to the LaSalle furniture account. I did not ask counsel to point out any clause in the real estate trust deed that authorized me to pay off a mortgage on some personal property. I think the amount paid was from eighteen thousand to three. It did not occur to me to find out really who were the people being paid off in paying those liens.

"Mr. Woods: Would it surprise you to know that certain officers of the Cody Trust Company had signed an agreement to purchase that receiver's certificate if it was not paid off in a certain time?

"The Witness: I am not familiar with it.

"Mr. Woods: You are not familiar with it?

"The Witness: No, sir.

"Mr. Woods: You never inquired. Would it surprise you to know that the LaSalle furniture account was up as collateral over at the Continental Bank for some notes which were signed by persons connected with the Cody Trust Company?

"The Witness: I knew it was at the Continental Bank; but that is all I knew about it."

The Witness: I think a fair statement of it is that counsel advised that payments should be made and they were made. I think that I did not have any authority of any kind outside of the language of the trust deed under which the City National Bank and Trust Company was appointed.

"Mr. O'Brien: Well, I object to that, your Honor. That calls for the conclusion of the witness on a legal matter.

"The Court: Well, he was acting. He may state
560 who he was acting under, what he claimed his authority was.

"Mr. Woods: You thought it was more important to pay off these claims that the Indemnity Insurance Company of North America had and that this man over at the Continental had than it was to provide any money at all to these bondholders during this period?

"The Witness: Well how could money be applied to the bondholders with the taxes and these other items in default?"

The Witness: We applied $26,998 and $5,571 to the taxes. I cannot give you the reason why $7,500 and some interest was paid on the receiver's certificate instead of being used to pay taxes, but amounts were paid on everything to keep everything in equilibrium.

"Mr. Woods: You kept everything in equilibrium except the bondholders, didn't you?

"The Witness: I think everything we did was for their benefit, every step.

"Mr. Woods: Do you think it was for their benefit to delay this present proceedings here in this court by opposing the other proceeding for three years?

"The Witness: If the other proceeding would not result in a good title, yes.

"Mr. Woods: If you had entered your appearance and gone ahead with the proceedings, what possible objection to the proceedings could there have been?

"Mr. O'Brien: I object to the question, your Honor. That calls for a legal conclusion of the witness.

"The Court: Let's see. He is exercising some judgment. Let's proceed.

561 "Mr. O'Brien: What has it to do with the operation of the property?

"The Witness: I am not qualified to answer that question.

"Mr. Woods: You are not qualified to answer that question?"

"Mr. O'Brien: Here, your Honor, is a matter of—the court wants to know what—

"The Court: He is managing the property. I want to know—Now, the problem in my mind is why this property has not been gotten out of court all these years when it might have been gotten out. That is the big problem I want to know.

"Mr. O'Brien: It does not call for a legal conclusion of the witness.

"The Court: Well, it does.

"Mr. O'Brien: Read the question.

"The Court: Overruled."

The Witness: I am not familiar as to whether or not counsel for the City National Bank and Trust Company filed in this proceeding we are now here in court on about the very same objections, in the very same language, which they had filed in the proceeding, 77B case, three or four years ago.

"Mr. Woods: You are not familiar with that fact and isn't it a fact that afterwards, after a conference in—you decided to come in here and let the court dispose of this property as it could have done three years ago?

"The Witness: I am not familiar with that either."

562 The Witness: Mr. Sturm would know about that. I did not know that all the time that a 77B case was on its trip to the Supreme Court and back, that there was a second 77B case pending in this court with reference to the same property. I did not know that that case remained here on the docket of this court with reference to this debtor, with reference to this property, and was not dismissed until the present petitions were filed and after the court had determined to find they were filed in good faith. I did not know that that proceeding was pending here all the time and remained in this court. I did not pay out all this money knowing that. Counsel undoubtedly told some officer of the bank.

Mr. Sturm or Mr. Toon could testify as to the foreclosure in the state court. I am not the proper one to know about that.

"The Court: Put this in the record (handing plat to Mr. Woods).

"Mr. Woods: All right, your Honor. Mark that Court Trustee's Exhibit C."

(Whereupon Trustee offered and there was received in evidence COURT TRUSTEE'S EXHIBIT C, being first floor plan which has been referred to by Mr. Bickel in his testimony.)

WILLIAM G. STURM, called as a witness, being first duly sworn, was examined and testified as follows:

Cross-Examination by Mr. Woods.

My name is William G. Sturm. I live in Chicago.
563 I am trust officer of City National Bank and Trust Company. My work involves reorganizations and in that sense I do have some contact and connection with this property.

I am a member of the bondholders' committee. The other members of that committee are Mr. Lewis Riddle—Mr. Riddle has his own business now. He formerly was with the Cody Trust Company. Albert Peterson also has his own business. He was formerly with Cody Trust Company. Mr. Kilmer was and perhaps still is in the investment business in Elkhart, Indiana. Mr. Tuttle is the other member of the committee, with myself. Mr. Tuttle is a trust officer of the City National. I have been a member of this bondholders' committee since it was organized in 1933. Mr. Tuttle has been a member during that period. Both of us have been with the City National Bank and Trust Company during that period.

The meetings of the committee were usually held at the City National Bank. Many of the earlier meetings were held in Mr. Riddle's office at the Cody Trust Company. Since the Cody Trust Company folded up, the operation is at the City National Bank.

I was not with any of the underwriters, your Honor, but as I understand it, forty per cent of the issues was distributed by the Chicago Trust Company and sixty per cent was distributed by the Cody Trust. Now, there may have been other dealers that in turn distributed. I believe there were. They were the two underwriters and distributors.

I have not had anything to do with the actual physical operation of the hotel. I have never been there for the pur-

poses of operation, though I have been through the
564 property a number of times. I had nothing to do with the renting, repairs or physical condition of the property.

My duties with the City National Bank and Trust Company with reference to this property are perhaps a little difficult to explain. They had to do with the bond issue, the defaults under the bond issue, and to try to find a fair and feasible means of reorganizing the bond issue. Primarily, those were my duties.

"The Court: Let me interrupt you. Why did you and Mr. Tuttle ever allow yourselves to become identified with this committee?

"The Witness: Well, because of the fact we had the reorganization, and we were acting with other committees who served other trust companies issues, because the Chicago Trust Company distributed forty per cent of this issue and we thought it was only proper and right that some of our personnel should act on this committee.

"The Court: And the Chicago Trust Company had been absorbed by the National Bank of the Republic, and the National Bank of the Republic was absorbed by the Central Republic Bank and Trust Company, and the Central Republic Bank and Trust Company was absorbed by the Central Republic Trust Company and that was absorbed by the City National Bank and Trust Company, and the City National Bank and Trust Company was reorganized and it was transacting the business of the Central Republic Bank and Trust Company, is that correct?

"The Witness: I don't think that is entirely correct, your Honor. The City National absorbed some of the
565 fixed liabilities of the other banks, and it did take over—

"The Court: Now, the City was servicing the Central Republic Bank and Trust Company?

"The Witness: It did service many of the trusts of the former banks and several of the—

"The Court: But that is the reason you two gentlemen allowed yourselves to be persuaded to become a member of the bondholders' committee?

"The Witness: That is right.

"The Court: And these other men, two of them acting with the Cody Trust Bank and they initiated an issue and they distributed sixty per cent of that?

"The Witness: That is right.

"The Court: And this gentleman from Indiana presumably had distributed some part of the sixty or of the forty?

"The Witness: That is right.

"The Court: Which was it, the forty or the sixty?

"The Witness: The sixty.

"The Court: I presume that is why these five men allowed themselves to be persuaded to become members of that committee?

"The Witness: That is right. I am not sure whether Kilmer distributed a lot of the sixty or forty. It may have been both. I am not sure of that.

"The Court: All right. Go on.

"Mr. Woods: Starting in with 1933, you told the Court that steps were taken to get this property reorganized.

566 "Mr. O'Brien: Now, just a minute, if your Honor please. I want to say this, I don't, of course, regard this as relevant to the matter before the Court. I think this is—

"The Court: Well, I will tell you, a Judge is human; the great question in that human being's mind is why, why was this property kept in court needlessly, as it seems, for years?

"Mr. O'Brien: I am perfectly willing to go into that.

"The Court: That is the great question in my mind. I am just telling you frankly. Why was this property, as it seems to me, needlessly—maybe it should have been kept in court; I want to know about it.

"Mr. O'Brien: The Court will have all the information we have got on that. But at the same time I wish to note here it has no bearing on the issue here."

The Witness: The first thing we did was to call the bonds for deposit. The committees are always interested in knowing something about the operation of the property, although it does not concern itself very much with the operation. They want to know that someone is in there operating the property and the property is being used for the proper purposes. We also had a survey of the property made to have information before the committee, to see what the possibilities were of reorganization. Some time early, after the committee was in the picture, this involuntary petition was filed, and we were advised that it was faulty

567 and if a reorganization were attempted through that proceeding that it would result with the kind of a title that we could not clear and find that we had a merchant-

able title. That proceeding was resisted and, as was here stated, thrown out.

We were willing at all times to negotiate with anyone who was in a position to negotiate, to develop a feasible plan. We did not have sufficient deposited bonds to work out a plan ourselves, without the cooperation of the junior interests, and we were not at any time able to get together on any feasible, workable plan with the junior interests. We solicited bonds as well as we could. Of course, the bonds were distributed, forty per cent by the Chicago Trust. That list was available to us. But the other list was not, and that perhaps explains in part why we did not have a very substantial deposit. We have also heard of trouble, as I said, in the junior interest—

568 I have heard of a controversy over the disclosure of bondholders' lists which occurred about four years ago. I believe in this court. I believe I have heard what the decisions were of this court and the Circuit Court of Appeals with respect to the disclosure of bondholders' lists. I usually find the court has ordered that a list be furnished. I cannot recall whether that was about four years ago but it seems that is about right. We did not have that vehicle available to us at that time.

"Mr. Woods: Now, Mr. Sturm, I have here the transcript from the United States Circuit Court of Appeals, in the case 5,488, which is this Harris *vs.* Tuttle litigation. In that transcript it says here that the deposit agreement under which your committee was operated was dated April 28, 1933."

I have not verified the correct date of the deposit agreement. I have heard that Chicago Title and Trust Company in the foreclosure proceeding in the Superior Court was appointed as receiver. The committee knew that three months after such appointment. The court on the petition of the bondholders' committee withdrew its order, discharged the receiver and had the property turned over to the Central Republic Trust Company, as trustee-owner in possession under the trust deed. This was not done for the purpose of heading off this court getting jurisdiction. That had no relationship to this court and jurisdiction. I have never heard that matter mentioned, those two things together, at that time. As far as I know, from that time until now until this court in this proceeding appointed a trustee there was no court officer in charge of the property.

569 As to the previous 77B case carried to the Supreme Court I do not know whether the trustee had any part in it or not or whether the committee did that alone. I don't recall that.

Mr. Woods then handed the witness the transcript of record from the United States Circuit Court of Appeals and asked him to look at it and say if he could find anywhere in that document where the City National Bank and Trust Company is named as a party to that proceeding.

Witness: I will just have to assume it is not there if you say it is not there. I don't see City National Bank's name mentioned on the cover. I would not know where else to look for it.

Mr. Woods then requested that Trustee's Exhibit D be marked for identification.

Mr. Woods then requested that Trustee's Exhibit E be marked for identification.

Mr. Woods requested that Court Trustee's Exhibits F, G, and H be marked for identification.

Whereupon the court recessed until 2:00 o'clock of the same day September 22, 1937.

Met pursuant to adjournment to recess 2:00 o'clock, P. M. September 22, 1937.

WILLIAM G. STURM, was further examined and testified as follows:

Cross-Examination Resumed by Mr. Woods.

The Witness: Exhibit D is a check for attorneys' fees in the Harris *vs.* Tuttle litigation. The money came from the trustee's possession account. It was from rentals from this Granada Hotel property. This litigation was
570 carried on as I understand it by the trustee and the bondholders' committee and on the appeal was taken up by the committee. For all practical purposes it was taken up by the committee and the trustee as well as the committee. In these proceedings I did not notice a lot of distinction between the committee and the City National Bank and Trust Company, they were largely one and the same thing. I did not say that whatever the committee does is the act of the bank and whatever the bank does is the act of the committee but in this proceeding it was substantially that. I do not know whether the committee or the City National Bank and Trust Company was made a party

to these proceedings by summons. I believe that they both came in voluntarily and intervened in this court. I think it is perfectly proper to take the bondholders' money and pay for this litigation which was carried on by the bondholders' committee. It was done for the benefit of all of the bondholders. As to pointing to any document or any record that gives authority to take the money that comes out of this property to finance a litigation where the bondholders' committee intervened, I am not well informed about the technicalities of a trust indenture but I have always understood that the trustee should do everything that he feels is proper for the protection of the bondholders, and I think in this matter it acted as it should. The committee cooperated with the trustee in doing it. The reason why City National Bank and Trust Company did not go up on that appeal was to avoid duplication. As to why City National Bank and Trust Company intervened in this court at all, there are some things about court procedure that are too deep for me, I cannot follow all the ramifications of matters of that kind. I undertook to look after the bondholders with advice of counsel in matters that were
571 legal. Generally speaking, a question of whether I would enter a law suit or stay out of it is a business proposition when I was not served with summons. The committee did sit upon the question as to whether they would intervene in this matter. The committee decided they would intervene, they thought it was the right thing to do. I knew that the effect of that was, if successful, that the petition would be dismissed. That was the purpose of it. It was not that it had any effect as to whether the State court proceedings would go on indefinitely. We wanted to get this bond issue reorganized in some way if it was possible. We did not consent in this court to the proceedings because we did not feel we would wind up with a valid merchantable title. The issues would not have been anything. We would have nothing that would do us any good.

"The Court: Do you think you are going to wind up in this court with something valid?

The Witness: I think so; I think so, aren't we?"

The Witness: As to the withdrawal of our objection here and why we did not do that before, as I understand it, the proceedings now are quite a bit different than they were before. I understand the involuntary petition filed in these proceedings came in on an equity receivership matter which was not there in the prior proceedings. Later there was

a voluntary petition filed here and we were very happy to have it right in this court so the property could be reorganized and finally wind up so as to give whoever had it a good, merchantable title. We had other cases that were kicked out, if I may use that expression, because of the decision in the Granada case, where I was very sorry to have them go out and I wish they had stayed in court and be cleaned up.

572 "The Court: With the same energy protecting the jurisdiction of the court in the former proceedings, if you had put the same energy into perfecting the jurisdiction of the court that you did disputing it, you might have helped along; what do you think about it?

The Witness: I think we used everything we knew of that was available to me.

The Court: To prevent jurisdiction?

The Witness: I don't know what could be done to perfect jurisdiction.

The Court: You did not know anything?

The Witness: No, frankly, I did not.

The Court: Surprised to get in?

The Witness: Well, we have been surprised to get—

The Court: No, no. At that time, did you do anything,—what did you do?

The Witness: In a matter of that kind, frankly, we have to rely largely upon the advice of counsel because that is entirely too deep for a layman.

The Court: Well, did you or did you not?

The Witness: I cannot say that we did not or did. But there was nothing suggested at that time as being available and making it possible for us to get in that particular proceeding.

The Court: That is, without limiting it to that particular proceeding; did you consider at all whether or not you could get into court where you could get your case on without getting the consent of everybody—

The Witness: We did with this issue.

The Court: What did you do at that time?

The Witness: We had looked for some available means to reorganize the first bond issue. In fact, it has not

573 been reorganized, has not been now; that is because we have not found anything we could do possibly for us to start it prior to now. That is our general position, and that is our particular position in this case.

The Court: That is what I am asking you to tell me, what you did; what did you consider?

The Witness: We negotiated for—with the junior interests to find some common ground, to find a basis of reorganization. We did not have enough bonds in our own committee to make it possible to go out independent of every other person that might have an interest. It was generally reported that people that had junior interests and also holders of certificates of deposit; there was nothing that was possible or practical that we could find that made it possible for us to reorganize this bond issue, and when the proceedings got into this court we were very happy to be here because we thought we had a vehicle at that time that made it possible to get a reorganization through, the first decent opportunity we have had to reorganize."

The Witness: I do not understand it to be a fact that on May 17th, the day this court entered its order and appointed its trustee, that the City National Bank and Trust Company filed in this present proceeding we are now in, the very same objections which had been filed in the former proceeding which went to the Supreme Court. I understand that the objections went to something different than that.

"The Court: At any rate, you are the man whose judgment was used to determine what you should do, were you not?

The Witness: Well, I was one of the committee, and I am in charge of the reorganization department over there, your Honor.

574 "The Court: Some witness said you said you were the man to determine whether or not they should be gotten out.

The Witness: Yes. It is important, Judge, to get these properties reorganized, that is correct.

The Court: What did you think; did you think this property was making progress in receivership?

The Witness: It was making some progress; not as much as I would liked to have seen.

The Court; Do you think it was going better when it was in the hands of the real owners?

The Witness: Yes.

The Court: Do you think so?

The Witness: Yes.

The Court: Maybe you are making a mistake, to take it out now?

The Witness: I don't know. Time only will answer that, your Honor; I don't know."

Mr. Woods requested the Court Trustee's Exhibit I to be marked for identification.

575 "The Witness: There has been a real under-current in this whole situation that perhaps is very hard to understand, to anyone. This property perhaps is regarded as somewhat different in ownership than an individual or corporation that is just controlled by an individual. There are under-currents trying to get control of this property at a very nominal, a small price; and he will obtain, as far as we could sense, through a trade and buy our bonds and if they do reorganize, get those bonds at a very small price. The most of the activity I have heard in this issue the last year. But to that point you are more than reorganized, through no fault of ours; that is something we have to contend with and meet; there was this whole time we have had the matter in charge.

"The Court: It is not at all surprising, the matter allowed hang around for three or four or five or six years; that is not at all surprising. That is the natural result of that sort of thing.

"The Witness: Well, I don't think it is true of the work we are doing over in our office, your Honor. My job is to get these things done and we do have a good, big part of our job completed, actually completed, and new securities delivered.

"The Court: The actual result of keeping up a business of this kind, an enterprise of this kind, for six years in court is to induce somebody to try to steal it.

"The Witness: I will assure you it was not our committee or anyone connected with the bank.

"The Court: I am not insinuating someone tried to steal it, but just tried to keep it in court.

576 "The Witness: I think some efforts have been directed, but that was back some time. We have tried to prevent it, and so far we have succeeded."

(Mr. Woods then handed Court Trustee's Exhibit I for identification to the witness, being a certified copy of appearance of City National Bank and Trust Company of Chicago in these proceedings on special limited appearance, setting forth in substance the possession by City National Bank and Trust Company, as trustee in possession.)

The Witness: I have no way of knowing whether or not by that document City National Bank and Trust Company filed exactly the same objections that had been litigated in the preceding 77B case, but I have been informed that such

objections are not identical, as the important question in the prior case was the question of jurisdiction; and also such objections went to the question of who should remain in possession of this property. When the voluntary petition was filed, that objection was waived because we were very anxious to go forward with the reorganization and perfectly willing that it should go forward in that manner.

(Mr. Woods then requested Court Trustee's Exhibit J to be marked for identification, which is a transcript of the record from the United States Circuit Court of Appeals for the Seventh Circuit, in case 5488.)

(Mr. Woods then asked the witness to look at page 11 and compare it with the document filed in this court, being Court Trustee's Exhibit I.)

The Witness: I would have no way of answering your question as to whether I think there is any substantial difference between the objections filed there and the
577 ones filed here. I am not a lawyer and the technicalities of these petitions, while I understand what they generally say, I cannot always point out the real technical difference between one petition and another.

(Whereupon Court Trustee's Exhibit I and Court Trustee's Exhibit J were offered and received in evidence.)

The Witness: I think it just happened that I was originally to be a member of this Granada bondholders' committee. We have a reorganization department and any time it was necessary to give attention to a defaulted bond issue invariably the same people were on the committee. In this case, because every bond issue was sold by the Cody Trust, because they sold 60% of the issue, three members were picked outside and two within our organization. It was logical that Mr. Tuttle and I would be those two people.

We had an issue of the old Central Republic Trust Company that was in trouble. There was no vehicle, no personnel or any one to give it attention at all; and we formed committees in all of those cases and we did so in this case, so that there would be some unified effort on the part of the bondholders to protect themselves. That was the only vehicle we knew about to make it possible to do that. Central Republic Trust Company did not have some kind of arrangement with the Cody Trust Company by which it would handle these issues. We had no contract with anyone. These issues were being serviced by the Central Republic Trust Company as trustee. When an issue defaulted certain of the personnel around the bank was picked to

form a committee to take care of that as a committee. The bank furnished the committee and it furnished the personnel and facilities to make it carry on. It became the depositary. If there were any fees allowed the com-
578 mittee they go to the bank. The reorganization department was not organized to make money out of defaulted bond issues. It was organized to furnish the service to people who had defaulted certificates. It did not try to make money out of it. We would be happy if we break even when it is completed. We do not try to lose it. We are trying to break even. It has been our objective from the very beginning. In trying to break even we do not try to get as much as possible out of each issue. We have a pretty fair idea what it costs and we charge on that basis. If that will cover our loss out of pocket when a job is completed, the bank will be very happy about it.

City National was not organized on October 5, 1932, to salvage what they could out of the Central Republic Trust Company. It was organized to take over the deposit liability of the Central Republic and then it subsequently acquired much of the trust business at the Central. I presume that is one of the things, that it was intended from the beginning to take over whatever trust business the Central Republic Trust Company had that was worth taking over. I had nothing ever to do with that at that time. As far as I know, there is only one contract that was between the City and the Central. Mr. Leonard in our organization would know if there had been a contract between Cody Trust or Chicago Trust and the Central Republic Trust Company by reason of which whatever benefits there were under that would come over to the City National under its contract with the Central Republic Trust.

The members of this Granada bondholders' committee have taken nothing whatever for themselves personally out of the Granada Hotel receipts. No money has been used for the payment of any other bills of the committee,
579 aside from the Harris *vs.* Tuttle litigation. Central Republic did finance the committee up to a certain point; but the City National did finance entirely on the main Granada matters.

The City National, with its officers and some officers of the Cody Trust Company, and some gentlemen down in Indiana, formed a committee to deal with this Granada situation. The committee perhaps suggested that City

National be nominated to be a trustee in the trust deed. My recollection is that the committee filed a petition in the state court and on that petition the state court entered an order by which it said that the City National Bank and Trust Company was the new trustee in the trust deed. City National Bank and Trust Company has so held themselves out since that time.

As to your question that, in other words, that goes around in a circle; the City National appoints a committee and the committee appoints the City National, I don't know whether that is a circle or not. I think it was the logical and proper thing to do.

I had nothing to do with procuring the resignations of these prior trustees and resignation of the Chicago Title and Trust Company as prior successor trustee. It was done around our bank some place in cooperation with the counsel here. I don't think, in substance, the City National appointed and elected itself the trustee under this trust deed. The committee petitioned for the appointment. The bank appointed Mr. Riddle and Mr. Kilmer on the committee. I, as a volunteer, getting together the people, selected the people for the committee who had some contact with people who bought the bonds. We just happened to meet together and appointed the mem-
580 bers of the committee. It is about the only way I know of appointing a committee. I don't know that Mr. Leonard particularly suggested to me and Mr. Tuttle that it would be a great idea to organize this committee. If he told me to do that I would do that. If he told me to go to the committee and have the City National Bank put in as trustee in that trust deed I would go and do it.

I cannot recall what was done with the money that was collected from this property during the period that the Chicago Title and Trust Company was receiver of the net rents; that is, between August 11, 1933, and January 12, 1934.

"The Court: Did you approve the issuance of this receiver's certificate that was outstanding?

"The Witness: The so-called—that came out of the Pick litigation? Did I approve it? I think I did.

"The Court: Was that for the benefit of the bond holders?

"The Witness: I think there is no doubt about it. You could not run that hotel without furniture, your Honor. It was a very serious matter to the Granada to keep that building furnished so he could operate it. I think without furniture it would have been ruination."

"The Witness: I did know that this Granada hotel property furnishes hot and cold water, heat and refrigeration to two other hotels. I did consider the desirability of reorganizing the three of those properties. My best recollection is the Arlington and Lincoln Park Manor, that the committee personnel is composed entirely of people in the City National Bank. We have considered reorganizing these three properties, together, but we did not re-
581 gard it, with the different set-ups, until it is shown that it was feasible or practical or that it could be done, so we picked out the Arlington singly and started on the Arlington, and that was well on its way before these proceedings were started, and as soon as the proceedings were started we grasped the opportunity to apply to this court. We would be very happy to do the same with the Lincoln Park Manor, but there are some problems that we still have to work out.

582 The Arlington could not be reorganized without a heating system. We are in position to install a heating plant. The other building is without a plant. All of these matters presented serious problems. They can be operated as separate units. It is a matter of opinion whether or not it is a less difficult business problem to unite those properties than to have new heating plants or make new arrangements about heating. I think it is very feasible and practical to have each property stand by itself and I think for the purpose of ultimate liquidation that may work out much better that way than they would as a united one. As to whether or not that would delay the bondholders several years before they got any returns, there is nothing to prevent the selling of this property after you have gotten the titles perfected, and that is the best way and the quickest. The selling of the property is a thing that bondholders, in my experience, prefer. I don't think they will have to wait until this indebtedness is paid or borrow the money on long term and use the excess earnings for the purpse of paying dividends to the bondholders. I think it is five or six years since the bondholders have had any income from any one of those properties.

I have been in the reorganization business since 1932 and prior to that was in the real estate loan department of Central Trust Company of Illinois, exclusively handling reorganizations.

583 I believe I know how it was that the foreclosure decree in the state court was entered on December 18, 1936 and the proceedings held were filed in Danville on

April 19, 1937, just one day more than four months. There was an action started against the corporation and judgment secured and they went in and started what I understand is called an equity receivership, and on that day they filed an involuntary petition down at Danville. I know nothing about how it happened that it was one day more than four months. I knew about it after it happened, but not one minute before, was no party to it and had nothing to do with it.

The Trustees fees, masters fees, counsel fees and all expenses that were to be allowed in the state court had been considered by the Committee. I would not say that they were considered particularly in this case—the Bar Association usually governs fees for attorneys and trustees fees are pretty well established. I feel that the limits fixed by the Bar Association are fair and absolve the Committee from not doing anything further about it. We have no vehicle for cutting fees below what the Bar Association fix. I understand in the state court the attorneys petition for fees and if they are in line with the Bar Association they are usually allowed. We did not make any objection about such allowance of fees in the state court.

I am not aware as to whether here were any objections filed to the Master's report in the foreclosure case. If there were no objections filed to the Master's report, I would not know whether a fee of $2550 to the Master was a reasonable fee. I would have to see the record
584 and know what the master had to do. I cannot just express an offhand opinion here. I did not investigate this matter.

Mr. Woods then called attention to the court trustee's Exhibit E.

The Witness: That speaks for itself. That is a check to Robert C. O'Connell, Master in Chancery for $2552.86. I don't recall that an application was made to this court in the Harris *vs.* Tuttle litigation to have this court pass on that fee before it was paid. I have no recollection that this court did not allow that fee and continued the matter and never passed on it. I was a litigant in that case and my name was in the record. As to whether I read the record in any way to be informed about the litigation, we have counsel to take care of matters in court, wherever they think it is necessary, or whenever we think it is necessary they consult with us and advise with us we give them advice. The matter of proving up fees with the mas-

ter I would regard as a very routine matter in the matter of a foreclosure and even in a bond issue.

I casually recall that all the time this Harris *vs.* Tuttle litigation was going through the mill in this court, the Court of Appeals and the Supreme Court of this United States there was another 77B case filed in Danville brought to this court which remained in this court pending until May 17, 1937. I knew such a case was pending and that nothing was done about it.

"The Court: Where was that case pending, before what judge; on whose calendar was that case?

Mr. Woods: It was on your calendar, your Honor.

585 Mr. O'Brien: No.

Mr. Woods: You kept it here until May 17; that day you had before you three petitions.

Mr. O'Brien: I beg your pardon counsel, the case was pending at Danville before Judge Lindley on a motion to dismiss, and Judge Lindley transferred the new petition up here; transferred the old and the motion with it. It was held in abeyance pending the outcome of the old Granada case. The case went to the Supreme Court. The basis of the objections of jurisdiction was the same as we laid in the Granada case."

Mr. Woods: Well, the point I wanted to bring out was that the case was pending in this court and this witness knew about it.

The Court: Yes.

Mr. Woods: His counsel knew about it while they were going ahead with other court proceedings.

Mr. O'Brien: That is admitted; you need not bring that out."

Examination by Mr. O'Brien.

Mr. O'Brien called the attention of the witness to court trustee's Exhibit J, at page 56, paragraph reading as follows:

"The Trustee contends that there should be no restraining order against the foreclosure proceedings in the state court. Those proceedings have been pending for some 4 or 5 years and have not yet reached a final decree. I am advised by counsel that the ultimate effect of a decree would be to bar certain parties claiming some interest. It seems desirable therefore that these proceedings be

586 allowed to proceed to a decree. Such prosecution may result in the saving of time and expense in marshal-

ing and liquidation of claims. However, it is desirable that no sale be had until it can be determined what is to be done under the present proceedings. I take it that counsel will not proceed to sale without further communicating with the court."

The Witness: I was generally familiar with that portion of Judge Lindley's opinion as rendered in the original Granada case.

Mr. O'Brien called the attention of the witness to the copy of the decree of sale entered December 18, 1936 in the foreclosure proceedings and referred to page 17 of this decree.

The Witness: The amount of the trustee's fees allowed was $2560, and the solicitor's fees are $9000.

I am not positive, your honor, but I believe that we charge 4% for collecting rents. Mr. Hubbart is in charge of that part of the operation. As far as I know there was no commission paid to anybody in respect to renting or collection except the 4%. 4% is the overall charge.

Mr. O'Brien then requested City National's Exhibit 1 be marked for identification, being abstract of record in the Supreme Court of Illinois in the case of William A. Thuma, Complainant *vs.* Granada Hotel Corporation, a corporation, et al., Defendants.

Mr. O'Brien called the attention of the witness to City National's Exhibit 1 for identification.

587 The Witness: The photographs of Exhibits appearing in this Exhibit correctly describe the items in controversy in this suit. It depicts such items as removed from the specimen apartment of the premises.

Thereupon Mr. O'Brien offered CITY NATIONAL'S EXHIBIT 1, which document was thereupon received in evidence.

The Witness: The Receiver's Certificate of Indebtedness which I have referred to was that issued for this particular furniture referred to in these pictures—the so-called "Pick" fixtures. They are fixtures consisting of carpets, ozite, in-a-door-beds, kitchen cases and china cases. It was for the purpose of acquiring those items from Albert Pick & Company and its assignees at the termination of the litigation reflected in City National's Exhibit 1 that the Receiver procured money on security for his Certificate.

I understand this first mortgage issue was underwritten by Cody Trust Company and Chicago Trust Company. I was not identified with either one of those companies. The

Chicago Trust Company consolidated with the Central Trust Company of Illinois in July of 1931. At that time the Chicago Trust Company was original Trustee under the first mortgage indenture and through the consolidation the Central Republic Bank and Trust Company succeeded as Trustee, and that bank later changed its name to Central Republic Trust Company. The Central Republic Trust Company went into receivership in November, 1934, and it was in April of 1934 that the Central Republic Trust Company took possession of the prop-
588 erty as Trustee from the state court receivership. That was on stipulation of all the parties.

As I recall, the payments aggregating $7500 on account of the receiver's Certificate of Indebtedness were made by the receiver, and at the time that the stipulation was entered into the agreement of the indemnity insurance company, holder of the Certificate through the surrender of possession by the receiver, was procured. In the order directing the surrender it was provided that the Central Republic Trust Company assume payment of the receiver's Certificate of Indebtedness.

At the time of the settlement of the Pick fixture situation, the Central Republic Trust Company procured a chattel mortgage on all of the personal property in the Granada. Central Republic Trust Company, or its predecessor in trust, prior to that time, did not have any tie in on the furniture, new or old, in the Granada. And, the payments made by Central Republic Trust Company, after it took possession subsequent to April, 1924 to the Continental in reduction of the conditional sales contract were made for the purpose of protecting the security of the chattel mortgage so obtained.

"Mr. O'Brien: In his objections the Trustee refers to the fact that the taxes on the Arlington are paid or substantially paid, whereas those on the Granada are not; do you recall that?

The Witness: I don't recall that. That was stated while I was here today.

589 Mr. O'Brien: I say in the written objections—

The Witness: Oh, yes. Well all right I do recall it.

Mr. O'Brien: Now, can you tell the court any reason that you know of why that situation exists?

The Witness: Well, the Arlington, in the first place, has been a little better earner than the Granada. It did not have the problems—

Mr. Woods: I object to that, if your Honor please. I want him to produce the figures.

The Court: Sustained.

Mr. O'Brien: Well, I—go ahead.

The Court: It is his conclusion.

The Witness: What do you want?

Mr. O'Brien: The statement that it is a better earner is stricken, but proceed from there on.

The Witness: Oh, you have got me confused now, just where I am out of order here. You say that it is a conclusion, your Honor? That is a better building—

The Court: You say it is a better earner; that is a conclusion.

The Witness: Yes, the Arlington did not have the problems tied up with it that the Granada had and produced a better net earning.

Mr. Woods: I object to that and move to strike it, 'It produced a better net earning.'

The Court: Strike it.

The Witness: Read the question and let me see what the question is, please.

(The question was read as follows:

590 'Q. Now can you tell the court any reason that you know of why that situation exists.'

The Witness: What situation?

Mr. O'Brien: That the taxes on the Arlington are paid whereas they are not on the Granada.

The Witness: Well, the income was adequate in the Arlington to pay the taxes and it—

Mr. Woods: I object, your Honor.

The Witness: And they were wholly inadequate in the Granada.

Mr. O'Brien: If the court please, after all I am not here on any technical aspect of this matter. I understood the court—that is, not on this point. I understood the court here this morning to say that he wanted to know the reasons for some of these things which I think are entirely collateral to the matter here. I am trying—

The Court: Of course, that does not get us anywhere.

Mr. O'Brien: Well—

The Court: If the witness showed that he had so many apartments and a gross income brought in from it and operating expenses were so much, then we would know. But just to say one is a better earner than the other, that does not tell us anything at all. The same man is running

the same two properties and making contracts between them.

Mr. O'Brien: Well, I—

The Court: Because he testified one was a better earner than the other—that is all.

591 Mr. O'Brien: I am not interested in the earning situation.

The Court: I want to know what was done with the earnings in the case of the Granada. That was not required in the case of the Arlington."

The Witness: Much of the income from the Granada went to acquire this furniture and the fixtures. The furniture in the Arlington was tied in as additional security for the loan from the beginning. Taking the Lincoln Park Manor, I have heard of Eugene Gehn. I never met Mr. Gehn, but I have heard of him many times. I understand he was the man who held the mortgage on that property and he foreclosed it and acquired title to it in that method. That was some years ago. The Central Republic Trust Company was trustee under that first mortgage also. It filed a bill to foreclose. It did not have the furniture tied in as additional security and it does not now. The Committee has no interest in the furniture in the Lincoln Park Manor. The tax situation of the Lincoln Park Manor is very bad. It is conservatively in excess of $25,000. Logan Mullins, the Receiver, is operating the Lincoln Park Manor. I understand that some time within the last year or perhaps a little more than a year he has leased the entire premises. I understand there is $800 a month being paid presently under the lease. I understand Mr. Mullins has been in as receiver for four or five years. I imagine the Committee has on deposit about 75 or 80% of the bonds.

In 1933, at the time the Committee was organized, the financial setup on the Granada was substantially the same as it is made to appear in these proceedings. There
592 was a first mortgage, $25,000 of which is subordinated; a second mortgage of $360,000. The City National still has $30,000 of the second mortgage bonds, which, as earlier represented here, are to be turned in for cancellation.

In April of 1934, the unpaid balance on the conditional sales contract held by the Continental was $19,400. That balance was reduced subsequently at the rate of $400 per month.

I do not believe that during the years 1933, 1934 and 1935 it would have been possible to reorganize the Granada any place, in or out of court. There was a very bad tax situation. We had a very low deposit of bonds. We were not able to get together with the people that controlled the title in the junior interest.

I have not checked whether the taxes are any better now than they were last year. They may not be and perhaps they are not very much better than they were in 1934. I suppose they are somewhat better each year; that is all but not substantially.

I think we have some additional bonds on deposit today that we did not have last year. I think before the plan was sent out we had 50% or a little more, and I think now we have just enough to put this plan into effect in this form. We were building up a deposit from 1933 on, but perhaps after the first year most all those bonds were deposited and not many after that were deposited.

I have not attempted to figure the value of this property. Perhaps it is worth $200,000 or $250,000. The amount of the first mortgage bond issue is $480,000 or $485,000.

593 "The Court: Where are your different objections, where are the obstacles and where have they disappeared to in the last several minutes, to a reorganization?

The Witness: To be supervised by this court, to make it possible.

The Court: And they have been for two, or three or four years?

The Witness: No, we have not found a vehicle, we had no way to come in here. The other parties did not want to come in. We were very glad to come in here, we would have grabbed that opportunity years ago.

The Court: But you did not want to come here?

The Witness: People in control bringing it in; we told the debtor to bring it in."

I think the control of the stock of the corporation in 1933 was in Cody Trust or some people associated with it. It was reported that it was then acquired by a syndicate. Up until the time that the voluntary petition was filed in this district the corporation was never willing to file a 77B petition. I discussed it with a man by the name of Wendstrand. The only party that I knew of that had any sort of interest in this property. I understand he controlled the stock.

"The Court: You were bailing him out on his liability on purchase of the receiver's certificate, did you know that?

The Witness: We certainly did not figure that.

The Court: You did not know that?

The Witness: We had the chattel mortgage and we were protecting that chattel mortgage, your Honor.

594 I don't know what benefit—

The Court: I say you could control Mr. Wendstrand but at the same time you were bailing him out, paying him out of the receiver's certificate which he purchased, did you know that?

The Witness: I didn't know I was protecting him. I thought I was protecting the bondholders when I was doing that; protecting the operation of the property, making it possible for this property to operate. I certainly had no interest at any time to favor Mr. Wendstrand or aid him in any way.

The Court: I was just wondering if you made him mad?

The Witness: Made him mad?

The Court: Yes.

The Witness: I would not have cared if he had gotten mad.

Mr. O'Brien: This petition was filed after that petition at Danville, that new petition at Danville?

The Witness: Yes.

The Court: You did not know Mr. Wendstrand was obligated to purchase that—buy that Receiver's certificate if he did not pay it off?

The Witness: No I did not know that. I don't know that now if it is a fact.

The Court: That is a fact isn't it?

Mr. Woods: I will offer the evidence, your Honor, in just a minute.

The Witness: I don't know that it is a fact; maybe it is; at least I have forgotten if I did know it.

595 The Court: I am just calling attention to it because I can't see why you did not take this out of court three years ago.

The Witness: No way to do it, your Honor.

The Court: I have not seen the reasons.

The Witness: There has just been no vehicle provided up to this time."

The Witness: I had a conversation in December of 1936 and following, with Mr. Wendstrand, about a reor-

ganization agreement on a 90-10 basis. Wendstrand reported to represent in the way of junior interests everything we needed. At about the same time I had some conversation with Mr. Ludwig on behalf of the Ingersoll group. Mr. Ludwig came in and shopped around in the same manner. We stated that the Committee was willing to start him on an all stock plan whereby the union interests would get 10% of the stock and the other bondholders to receive the other 90%. They talked about it but I saw no performance. As to bringing about performance, we were willing to sit down any time and have him bring in what he represented to control and we would have immediately drawn a contract and gotten out a plan as we were anxious for a plan.

Mr. Wendstrand said that he had in mind at that time that he would like to join in a plan of that kind. He also at one time or another indicated that he would like to buy the bonds, but at this discussion there was no discussion about the purchase of the bonds. There were several discussions, however, at other times in which Mr. Wendstrand indicated what he wanted to do was buy Committee bonds. My recollection is that the price mentioned was around 20¢. The Committee was not willing to sell the bonds at that price.

596 "The Court: Well, now you see what you did; just by delaying this proceeding; delaying this proceeding you reduced the money price of those bonds to 20¢ that is all that evidence shows; you were in a commanding position; you had 50% of the bonds; you could have gotten this case out of court if you wanted it done.

The Witness: We could not foreclose it, your Honor. We couldn't buy it in at the sale.

The Court: You could have gotten it out, it seems to me if you really wanted it out, and because of your failure to get it out somebody will buy the bonds all at 20¢ on the dollar.

The Witness: I will certainly lend no assistance to that your Honor.

The Court: You did not get the property out of court.

The Witness: We did not have any way to come into the court."

The Witness: I am in charge of the Reorganization Division of the bank. I have had occasion to deal in Chicago with about 425 issues. We have about 70% of those actually reorganized and have plans out on between ten

and fifteen percent of the remainder. Quite a few of them have been concluded in the Federal Court. We have had plans in the Federal Court almost immediately after the enactment of the act. That includes the Pine Grove issue, The Austin Hotel, the first issue on Griswold & Walker, and others. In all of those cases Central Republic was Trustee. In a very few cases receivers were in possession operating the properties pending the reorganization proceedings. The properties were mostly operated by the
597 trustee in possession, either the Central Republic or the City National. The reorganization of the 70% or 75% of the properties reorganized has been spread over a period of the last four years. There was no reason other than those to which I have referred why the Granada was not reorganized and gotten out of court in the same way.

We have a staff which helped reorganize those properties. Mr. Tuttle spends all his time in connection with the reorganizing of companies and Mr. Leonard gives considerable of his time and attention to such reorganization, and we have a staff of about 25 or 26 people who spend all their time on reorganization work, did nothing else.

I understood there were some objections filed to the approval of the involuntary petition. I may be mistaken.

"The Court: I thought your firm made objections—did you make objections Mr. O'Brien?

Mr. O'Brien: No, this was the only thing we filed in this case (indicating document).

The Court: Did you object to turning over the property to the trustee?

Mr. O'Brien: Yes.

The Court: And after the course of two or three days you or somebody else came in and said you were not going to press that petition?

Mr. O'Brien: We came in to tell you of our conclusion, yes.

The Court: I told you I was going to try to take possession; and after two or three days you came in and told me that you were not going to press your petition;
598 isn't that so Mr. O'Brien?

Mr. O'Brien: That is substantially so, your Honor. We said we would waive the point in view of the fact that the court—

The Court: The court was stubborn.

Mr. O'Brien: The court said if we prevailed on the point he would vacate the order, etc. and dismiss the proceedings.

The Court: Yes, I think I did tell you that.

Mr. O'Brien: Yes, that is right. I don't want to take any further time on that—that is all."

Cross-Examination by Mr. Woods.

The Witness: I do not recall that I ever offered any objections to the payment of this $7500 on the receiver's certificate. I did not make any objection to the payment of the money on the purchase of personal property from the La Salle Furniture Company. As to any inquiry as to whether there was any authority in the trust deed by which the Trustee could spend money to buy personal property, as I understand matters of that kind, we had a chattel mortgage ~~at that time~~ and it was necessary to protect the chattels, and in order to do that these payments had to be made. I think as a collateral matter the chattel mortgage being additional security that the trust deed gave ample authority to do that.

599 Mr. Woods then showed the Witness the Court Trustee's Exhibits K, L, and M, which had been marked for identification, Court Trustee's Exhibit K being bond circular of Cody Trust Company with respect to First Mortgage Bonds; Court Trustee's Exhibit L being memo of understanding between Chicago Trust Company and Cody Trust Company in re Granada bond issue; and Court Trustee's Exhibit M being application of bond in judicial proceedings to Indemnity Insurance Company of North America.

600 The Witness: As to Court Trustee's Exhibit K, "I had nothing to do with this circular, but I may have seen a copy of it." I was not particularly interested in what had gone before but was interested in what was current and what had to be done to it. I knew what the bondholders had bought by being familiar with the property and knowing where it was located. Instead of looking at the prospectus under which the bonds were sold I preferred to have the people in our ~~employ~~ gather information concerning the property. I did find out what the bondholders purchased, but I did not do it from the circular. I was interested in getting the information first hand. I did think the information in the circular to the bondholders buying bonds was important but I was engaged in going something for the bondholders. Whether the circular said there were 22 or 92 apartments I was not

concerned. I never had anything to do about that. If that circular described not only the physical property and the real estate but also described all the personal property in it and gave its value as $80,000, I think that was what the bondholders thought they purchased. I know that it was represented in the circular that they bought the personal property when they bought the bonds, but they did not get it. We got part of the money to buy this personal property, that is $11,000 or more, from the Indemnity Company and the Receiver's certificate—$13,000 came from the trustee in possession. We were paying for it for the first time as far as I am concerned. According to the circular the bondholders had already paid for it.

As to whether or not it was paid for twice, you can
601 draw your own conclusion, I don't know. I did not make any effort to make the Cody Trust Company pay for the receiver's certificate because we did not think it was collectible. As far as I can recall I did not make any effort to have the officers of the Cody Trust Company pay for the receiver's certificate.

Document marked Trustee's Exhibit L was handed to the witness.

The Witness: I cannot recall that I have ever seen that document. I would not be surprised if you told me that that was furnished to you by my counsel and came out of the files at the City National.

The property was responsible for the payment of the receiver's certificate at the time it was given. I knew it was necessary to have the furniture and the only way I could do was to get this chattel mortgage; To make it possible to get the chattel mortgage there had to be a settlement of this claim which made it necessary to give this receiver's certificate.

I didn't take my own money to do it because it was a job we were doing for the bondholders. We had authority under our chattel mortgage and under our trust deed coupled together to do this. I presume the bondholders did not sign the chattel mortgage. I think the bondholders are bound by the indenture and anything that we have collateral to that indenture securing the bonds. I think it was utterly essential to protect and preserve the interests of the bondholders to get that chattel. I think that was good business and was absolutely necessary and essential.

The witness was then handed Court Trustee's Exhibit M.

The Witness: I cannot say whether I have seen this document or not. I no doubt heard that by this indemnifying agreement Elof Wenstrand, Hiram S. Cody
602 and Lewis W. Riddle agreed to purchase that receiver's certificate from the insurance company unless the trustee paid it.

We went ahead and paid out the money as that was the only way I knew of to protect the interests of these bondholders and keep the furniture of that hotel so we could operate it as a hotel. I have never inquired as to whether a receiver's certificate is a commercial obligation under which a suit can be filed to recover the amount. I assumed that the receiver's certificate gave the holder a prior claim on the income from the property or had the effect that it would have to be paid out of the income.

Mr. Woods then caused the Court Trustee's Exhibit N to be marked for identification, being a typewritten copy of the receiver's certificate and handed the document to the witness and requested the witness to look at it.

The Witness: I have seen that document before. The witness then read from the document as follows:

"Under and by virtue of the order of the Superior Court on the 11th day of August, 1935, in said cause last aforesaid, and constituting by virtue of such order a valid and subsisting first and prior lien upon the real estate and the premises hereinabove described or the proceeds of any sale thereof * * * subject only to the lien of the unpaid general taxes and upon the rents, issues, income, and profits, however, subject to the prior lien of the Central Republic Trust Company, as trustee, under trust deed recorded," etc.

"to the extent of $8500 of the first rents collected."

603 The Witness: I know there are unpaid taxes. I believe that $8500 in taxes were paid from the time that document was made and we filed this certificate. That is exactly as I interpret it; I think that is exactly as it was intended. The provision as to the $8500 was put in the certificate to reduce the taxes by that much before we paid anything on account of this receiver's certificate. My idea is that where the taxes were reduced that much that provision would have been complied with. It is not a fact that the provision as to $8500 was put in the certificate to protect the trustee and the trustee's counsel in order that they might be paid before the receiver's certificate was to be paid.

Thereupon, an adjournment was taken until Thursday, September 23, 1937 at the hour of eleven o'clock A. M.

Met pursuant to adjournment Thursday, September 23, 1937 at eleven o'clock A. M.

WILLIAM G. STURM resumed the stand and testified as follows:

Cross-Examination Resumed by Mr. Woods.

The Witness: I have certain vouchers and debit tickets which you asked me to look up (the witness thereupon produced certain documents and handed them to Mr. Woods).

Mr. Woods thereupon had Court Trustee's Exhibits D, E, F, G, and H and D-1, E-1, F-1, G-1 and H-1 marked for identification.

Mr. Woods handed the Exhibits to the witness.

The Witness: These are photostatic copies of vouchers on which checks were drawn. They were all authorized by proper officials of the bank. Moneys to pay these checks were taken out of the Granada funds held by
604 the trustee-in-possession.

Mr. Woods then offered in evidence the Exhibits which were received.

COURT TRUSTEE'S EXHIBIT D being photostat of City National check dated March 13, 1936 to Defrees, Buckingham, Jones & Hoffman in amount of $3,857.79.

COURT TRUSTEE'S EXHIBIT D-1 being photostat of debit slip dated March 14, 1936.

COURT TRUSTEE'S EXHIBIT E being photostat of cashier's check of City National dated February 6, 1936 to Robert C. O'Connell, Master in Chancery, in amount of $2552.80.

COURT TRUSTEE'S EXHIBIT E-1 being photostat of debit slip dated February 7, 1936.

COURT TRUSTEE'S EXHIBIT F being photostat of City National check dated February 23, 1937 to Indemnity Insurance Company in the amount of $511.01.

COURT TRUSTEE'S EXHIBIT F-1 being photostat of debit slip dated February 23, 1937.

COURT TRUSTEE'S EXHIBIT G being photostat of check of City National dated May 3, 1934 to Continental Illinois Bank and Trust Company in amount of $2,465.

COURT TRUSTEE'S EXHIBIT G-1 being photostat of debit slip dated May 4, 1934.

COURT TRUSTEE'S EXHIBIT H being photostat of check of City National dated September 22, 1936 to Indemnity Insurance Company.

COURT TRUSTEE'S EXHIBIT H-1 being photostat of debit slip dated September 23, 1936.

Mr. Woods then had marked for identification COURT TRUSTEE'S EXHIBIT C-1, which Exhibit was offered and received in evidence.

605 Court Trustee's Exhibit C-1 is a pamphlet which contains photographs of certain operations of the building.

The Witness: I have seen a Granada bond. I have forgotten who the actual signers were. I think Wenstrand was one of the guarantors of the bonds.

"Mr. Woods: You stated yesterday that you thought you remembered you had seen this Exhibit M which is an indemnifying agreement signed by Wenstrand and indemnifying the Indemnity Insurance Company of North America for going on the $40,000 bond in this court in the Pick litigation, and for repurchase of the receiver's certificate; you stated you had seen that document before didn't you?

The Witness: Yes, I thought I had seen it.

Mr. Woods: Now, did you think it was correct to use the bondholders' money to redeem Mr. Wenstrand's obligation.

Mr. O'Brien: I object to that.

Mr. Woods:—on the bond?

Mr. O'Brien: If the Court please, the witness has not said he used any bondholders' money to redeem Wenstrand's obligation, and there is no—and it is not the fact and there is no such thing in the record.

Mr. Woods: This man has testified, your Honor, that in his opinion this property is worth $200,000; but a million dollars of obligations; if the money did not belong to the bondholders I would like to know who it does belong to.

The Court: Let him answer."

The Witness: I don't believe I was discharging Mr. Wenstrand's obligation and I thought the use of the money was entirely in the interest of the bondholders to protect the chattels under that chattel mortgage. I
606 don't think that it released anybody. To my knowledge I did not ask Mr. Wenstrand to pay off that re-

ceiver's certificate and I do not recall that I asked him to pay off the lien which Pick had on the furniture. I knew he claimed to have an interest in the property and I presume in the furniture too.

I never talked to Mr. Wenstrand about paying off the receiver's certificate. I did talk with him about a reorganization. I was familiar with his affairs in the sense that I believed him to be wholly unable to meet the obligations.

Wenstrand claimed to have an interest in the corporation. He stated he had control of all the junior mortgages. I don't know whether that was a fact or not. I dealt with him because I felt he had an interest in the corporation and that he was a proper person to deal with.

Within the last few months and prior to these proceedings, I was attempting to deal with him. I had a question about that at all times, about his ability to perform but I was frankly willing to negotiate because I did not know anyone else with whom to negotiate. I never asked him to pay the liens and obligations himself as I thought it was entirely futile and would be a waste of time. So far as I know no one else at the bank asked him to and I doubt if any one connected with the bondholders asked him to. I don't recall the exact detals of how the money was used upon receipt of the receiver's certificate, particularly regarding the $2000 attorneys' fee to which you refer. That may well have been paid. I understand that was done. I approved the payment of that $2000 for attorneys' fees, when I say "I", I mean someone in the City National Bank and Trust Company as Trustee approved the payment. The Bondholders' Committee did not object.

607 I understood that as part of the settlement Mr. Wenstrand, Mr. Lewis W. Riddle and Mr. Hiram S. Cody, who were on that indemnity, Exhibit M, together with the Indemnity Insurance Company of North America, were released on their bonds of $40,000 in this court in case 8817, which was in default. I thought that it was proper to take the funds of this trust and pay off the obligations of those people on that bond in this court. I am not sure whether the matter was discussed at the bank before that payment was made. I believe I sat in on a discussion of it. I have a recollection of having discussed it and I believe Mr. O'Brien was present. I cannot say who else was present, perhaps two or three men around our organization—they generally are. We met

two or three members of the Committee, if possible. We usually have two or three sit in on a matter of this kind because we regard it of sufficient importance for two or three people to sit in. I would say deliberate action was taken.

The matter of the approval of the State Court of the receiver's certificate was left entirely up to counsel. I take it for granted that was the right way to do it.

I don't know whether those gentlemen were released on this indemnity; I don't know just what kind of an order was entered at this moment. If the Indemnity Company was re-released I suppose they fell with the release to the Indemnity Company.

Witness excused.

608 ARTHUR T. LEONARD was called as a witness, having been first duly sworn, was examined and testified as follows:

Cross-Examination by Mr. Woods.

My name is Arthur T. Leonard. I live in Chicago. I am Vice President in charge of the Trust Department of City National Bank and Trust Company. I have been in that position since the organization of the bank on October 15, 1932. Prior to that I was Vice President in charge of the Trust Department of Central Republic Trust Company. I was connected with Central Republic Trust Company from July 1, 1930 to the time they went out of business. Immediately prior to 1930 I was an officer of Dawes Brothers, Inc. engaged in the utility business, and prior to that association I had been a trust officer of Central Trust Company of Illinois. I did not hear all of Mr. Bickel's testimony, just the last part, but I think I heard all of Mr. Sturm's testimony. I believe I am pretty well familiar with the testimony they have given. There is nothing in that testimony that I want to change. I first heard several years ago that there was a Granada Hotel and that it was in trouble. I would not be able to recall the exact date.

From the time the City National was organized down to the time that is known as the termination date, it serviced Central Republic Trust Company so far as trust service was concerned; City National took over the Granada business. I have known about this situation gen-

erally since the Central Republic went on the record in this matter. As to my specific duties with reference
609 to this Granada matter, I have been consulted a number of times from time to time concerning matters coming up in connection with it. Mr. Bickel, Mr. Sturm and Mr. Hubbart are junior officers under my direction.

I did not know anything about the incinerator in the hotel and did not even inquire about the interior operations of the Hotel. I had not heard of this large space adjacent to the lobby which has never been rented until the time you brought the question up. I have never been in the hotel. I have not even asked for a plan of it or a pamphlet about it. I don't believe I have ever seen the operating statements of this property. I do not have anything directly to do with the payment of taxes on this property. Of necessity, I must leave all these matters to the operating officers of the Trust Company. If some kind of policy arises or something of a very unusual nature, I am consulted. I did not handle any accounts myself nor attempt to handle nor follow the details.

As to the determination of whether or not the Bank was going to take on a trust account, that is determined by a Committee under the present regulations. I am Chairman of the Committee. I don't recall that anything came before that Committee that indicated there was any time to be set or any method or plan devised to get rid of this trust. I do not periodically run over these trusts to see whether they should be gotten out in the hands of the public. All questions that are submitted for acceptance are passed on by that Committee and all questions that are classed closed are passed on to that Committee. Unless there is some reason for closing that account it is not given attention by that Committee. I did not
610 know anything about the financial history connected with this property other than what I have heard since I have been in the court room at these hearings.

Referring to Cody Trust Company, Chicago Trust Company, Central Trust Company, National Bank of the Republic and Central Republic Trust Company, the City National did not succeed to all of that. We succeeded in this trust which was formerly with the Central Republic Trust Company which resulted from a consolidation of Chicago Trust with the Central Trust Company. City National never had any connection with Cody Trust. I have heard that Chicago Trust Company was a co-house of issue with

the Cody Trust Company in this particular Granada financing.

It did occur to me that the Granada issue which had been through all those financial institutions required special treatment. I took it into the organization and it received special treatment. I would not say I paid any more attention to it but I was available to be consulted all the time. I recall consulting with members of the organization and counsel with reference to the previous 77B proceeding and the question of taking appeals and various steps in connection with that matter.

I knew about the case of Harris *vs.* Tuttle, that is the one that went to the Supreme Court of the United States. I approved that. I approved the payment of money for fees in that case. I believed it to be essential litigation and counsel were entitled to be compensated.

I am not sure of my own knowledge whether or not the Committee represented about 50% of the bondholders.
611 As Trustee we represent 100% of the bondholders.

City National was appointed Trustee by the Circuit Court or Superior Court. I don't recall which court. I am advised by counsel that the appointment was valid. I am not a practicing lawyer. I am a member of the Chicago, the American and the Illinois State Bar associations. I have not practiced law for twenty years.

"Mr. Woods: Isn't it a fact and a well known and established principal of our law in Illinois that in a foreclosure proceeding no matters affecting the title itself can be litigated.

Mr. O'Brien: Just a minute, if the Court please.

Mr. Woods: Hasn't the Supreme Court ruled that over and over again?

Mr. O'Brien: I object to that, if the Court please.

Mr. Woods: He can answer if it is a fact whether he knows it or not.

The Court: Let him answer that.

The Witness: I don't know.

Mr. Woods: You don't know?

Mr. O'Brien: It is not the law anyhow."

The Witness: The litigation was not conducted alone by the Bondholders' Committee. As I recall it as Trustee the City National intervened and became a party to that litigation. I don't recall whether it was before or after Judge Lindley had made his decision in the trial court. I presume it was after. I believe City National voluntarily came in.

"Mr. Woods: Does the trust deed provide that you may go out and intervene in any kind of litigation you think you would like to intervene in?

612 Mr. O'Brien: I object to that, if the Court please. The Trust Deed is clear and it should be in evidence. The Trust Deed speaks for itself.

The Court: What does Mr. Leonard think about that—

Mr. Woods: What do you think about it?

The Witness: I think the Trustee has a duty to intervene in any proceedings which he may think may affect the liens of the property or validity of any proceeding involved with the property.

The Witness: I presume that the proceeding that went to the Supreme Court of the United States was not against the Debtor here but against the old Granada Hotel Corporation. I knew that that corporation did not own this property. I believe I have heard that recently that corporation had been dissolved by the Attorney General of Illinois.

Mr. Woods: Did you think it is proper to take $4000 of the trust funds in your hands and go off into this litigation and intervene in them, is that right?

Mr. O'Brien: Your Honor, just a minute. I object to that question. The instrument is already in evidence and a transcript of that proceeding clearly shows, and we all know—

The Court: I don't see anything wrong with the question. Objection overruled.

Mr. O'Brien: Judge Lindley ruled that he had a right to reorganize one of the corporations.

The Court: Here is something I did not know before. I didn't know it was some corporation that had nothing to do, apparently had nothing to do with this concern.

613 Mr. O'Brien: The corporation made the issue of bonds and Judge Lindley and the Court of Appeals held they could reorganize whether it had been dissolved or not. That is the way, Your Honor, I recollect it.

The Court: Who made the mortgage?

Mr. O'Brien: The Granada Hotel Corporation is the one he is talking about. Not the Granada Apartments, Inc.

The Court: Well, let him answer that question.

The Witness: I think it is entirely proper when I am advised on any reorganization coming out of that proceedings would be invalid and that we would be unable to obtain a clear title to the property for the bondholders.

The Trustee believed it was its duty to intervene in those proceedings. The amount paid for what was done in the trial court and for what was done in all three of the courts was $3,857.79, and covered the payment in full of services to date from the United States District Court to the United States Circuit Court of Appeals and of services in the Supreme Court of the United States. I presume the Trustee was paid the costs in that case amounting to $167.50.

Mr. Woods: Do you know how much was paid for a manager out there during the time the Trustee was in possession, Mr. Leonard?

The Witness: No, I don't.

The Court: Do you Mr. Sturm?

Mr. Woods: Here is a check, Your Honor, Exhibit I, I believe it is.

The Court: How much was paid?

Mr. O'Brien: $50 a month; is that right?

Mr. Woods: Exhibit E.

614 The Witness: He is talking about a manager out at the hotel.

Mr. Woods: Master in Chancery, he said.

The Court: No; manager; $50 a month.

Mr. O'Brien: That is $50 a month.

The Court: What else did he get?

Mr. Sturm: I guess he had his room.

Mr. O'Brien: No.

Mr. Sturm: He did not.

The Court: He got $50 a month.

Mr. O'Brien: $50 a month, that is right.

The Court: What else did he do for a living?

Mr. O'Brien: He is in the real estate business and operating other properties. The gentleman is Hall, Mr. Hall.

The Court: Tell me about it. Who was Mr. Hall?

Mr. O'Brien: There (indicating).

The Court: Hall got fifty dollars a month as a manager?

Mr. O'Brien: That is right.

The Court: Was there any other person got any fees for managing?

Mr. O'Brien: No.

Mr. Sturm: We had a resident man.

The Court: How much did he get?

Mr. Sturm: He gets $250 a month.

Mr. O'Brien: He still does, doesn't he?

The Court: Mr. Hall got $50 a month.
Mr. Hall: I draw $50 a month for expense money.
The Court: How much?
Mr. Hall: $50 a month for expense money.
615 The Court: What did you get for your services?
Mr. Hall: That is still on the fire. It probably never will be paid.
The Court: And the resident manager got $200 a month. Any other manager have those fees?
Mr. Hall: No, except the fees that were paid were spent for management services.
The Court: How much was paid to them?
Mr. Hall: That was 4% of the gross receipts.
The Court: That is $200, $65 a month.
Mr. Hall: Well—
The Court: They amounted to about that.
Mr. Hall: Fifty dollars a month came out of the management there, that was paid by the bank.
The Court: Came out of what?
Mr. Hall: That was deducted from the management.
Mr. O'Brien: It came out of the trustee personally, that is all.
The Court: Oh.
Mr. Hall: 4% was computed and the $50 deducted from that for expenses and the balance was paid to the bank for management each month.
The Court: Where is your claim?
Mr. Hall: I have no claim.
The Court: Working for the love of production?
Mr. Hall: Well, they had then started the Cody Trust connection, and I have not bothered to press that. I did not need it, I am not worried about it.
The Court: I am glad to find somebody that does not need money. But now let me ask you this: the $50 a month that you got came out of the 4%?
Mr. Hall: Yes.
616 The Court: Did the $20 come out of the 4%?
Mr. Hall: No, that was paid as a part of the payroll, the operating payroll.
The Court: So when their money went for managerial service, did you get that either?
Mr. Hall: None whatever.
The Court: Now, 4% on what?
Mr. Hall: That is on all gross collections. If the gross collections were $6000 it would be $240 less $50.

The Court: Did you ever sell anything up there during the time?

Mr. Hall: No.

Mr. O'Brien: I have the detail on that fact, if the Court wants it.

The Court: No. What was the operating fee; what did they aggregate, about; what was the average monthly amount?

Mr. Hall: Well, I would say $6000 would be an average

Mr. O'Brien: Here is one, $249.85.

Mr. Hall: It varied, the amount, of course.

The Court: Did the bank get 4% of the moneys collected from the Arlington and the other hotels?

Mr. Hall: Yes sir.

The Court: What?

Mr. Hall: Well, that was a separate transaction. You mean the amount collected from the hotel?

The Court: Yes.

Mr. Hall: Oh, yes, that was part of the earnings.

The Court: Here they collected $1000; then they made $40 for just receiving the check.

617 Mr. Hall: Yes. They would owe me $10 on that plus.

The Court: They would owe you $10. Why would they owe you $10?

Mr. Hall: Of course, I was to have fifty.

The Court: Fifty what?

Mr. Hall: Fifty dollars; expenses. Of course it costs me something to go to that place, and other things. The expenses would probably eat up the fifty; more probably; I don't know about that.

The Court: You say the average, common, the average gross monthly income from there would be—

Mr. Hall: It was around about six or seven thousand.

The Court: Sixty Five Hundred?

Mr. Hall: That would be very close I would think.

The Court: And twelve times that would be, for a year—

Mr. Hall: Yes. We have an accurate record of that.

Mr. O'Brien: I have an exact record here, your Honor; sixty-seven, sixty seventy-two.

The Court: It would be about Eighty Thousand Dollars a year.

Mr. O'Brien: Income, net return, about ninety.

The Court: What?

Mr. O'Brien: Ninety thousand.

Mr. Hall: I don't know exactly. I have so many figures in my head, I hate to make a statement.

The Court: Four per cent of about eighty thousand would be thirty-two hundred; and two thousand—two hundred dollars a month would be twenty-four hundred; that would be about another twenty per cent of the gross, wouldn't it?

Mr. Hall: Of course, the manager devotes—

The Court: It would be about in there, three, three and a half or four per cent.

618 Mr. Hall: Of course the manager does not devote all his time to the property; he has other activity.

The Court: I am just finding out what the costs are.

Mr. Hall: I can give you the costs since the Trustee has been in possession, the exact cost, if you wish that, the exact figures for each calendar year, which would probably be safe.

The Court: What did it cost to manage it?

Mr. Hall: The total cost to manage?

The Court: Yes.

Mr. Hall: I would have to refer to the records to get that exact figure.

Mr. Woods: The exact figures, your Honor, are on page 13 of the answer of the trustee here, and we will prove these up later.

The Court: Just roughly.

Mr. Woods: The total is $11,364.42 for that period.

The Court: How much?

Mr. Woods: $11,364.42, the management fees.

The Court: That is management fees over and above this four per cent?

Mr. Woods: No, that is the four per cent.

The Court: Eleven Thousand?

Mr. Woods: $11,364.42.

The Court: 42 cents?

Mr. Woods: That is from the beginning of 1934, of the time the Court Trustee took charge.

The Court: 1934, '35 and '36.

Mr. Hall: We will have four years.

Mr. Woods: Three years and a half.

619 Mr. Hall: That is just the exact management fee, isn't it?

Mr. Woods: That is the exact management fee of 4%.

The Court: On top of that, there was $2400 a year.

Mr. Woods: Correct.

Mr. O'Brien: That is an operating charge.

The Court: What is your judgment, Mr. Leonard; assuming that a property of this kind costs $3,200 for some

sort of fees; $2400 for another sort of a fee, and assuming that there is still a principal higher up and that it has receiver's and trustee's fee and general attorny's fee; what do you think, do you think that that was a profitable property for the owners of this enterprise?

The Witness: Your Honor, I think it was necessary expense for the enterprise and I dont' think it was excess beyond reason.

The Court; Just how much do you think real estate can bear in this town; what do you think real estate can bear in the way of management costs?

The Witness: I would say your Honor that the regular schedule is—

The Court; Don't talk to me about schedules. I know something about schedules. What do you think it will bear?

The Witness: It won't bear anymore than it has to.

The Court: Don't you think that—you were the head of this Trust Department.

The Witness: I am.

620 The Court: Don't you think that something—you should have given consideration to see the desirability of speedily getting this property out of court and out of the management and the trust companies and into the hands of the owners, don't you think you should have done that?

The Witness: Judge, I feel the same way with every real estate bond issue that is in our shop.

The Court: You do feel that way?

The Witness: Yes, sir.

The Court: You think you did everything that reasonably could be done to get this property out of court?

The Witness: I am satisfied we have.

The Court: I wish I were; I wish I were.

The Witness: I feel that circumstances might exist in this property and the time it existed during this period could not have let us get it out any sooner.

The Witness: We felt it was the trustee's duty to oppose the Harris *vs.* Tuttle litigation because in a reorganization getting you out of any proceeding would not be a valid reorganization and we could not get a good title. If the Trustee had not raised that question and it had not appeared in the record and the Trustee had gone on with the proceeding there would have been something there to indicate the Court did not have the completest jurisdiction. There would have been the fact that the reorganiza-

tion did not comply with the requirements of 77B and when it came time to sell the property you could not have made good title. I was advised by counsel that we could go to the Supreme Court of the United States and get such a ruling.

621 At the time the City National Bank accepted this trust by appointment, I thought that the Court order bound everybody completely forever. I thought it was a good appointment. The Trustee did not appeal from that order and did not want a final ruling from the Supreme Court of Illinois on that question. The Trustee did not accept it. I did not accept the trust gladly. I accepted it readily. The Trustee was appointed on a petition filed by the Bondholders' Committee. I don't believe any one appointed the Bondholders' Committee. I did not select them, I don't know who did. The two active members of that Committee are junior employees of City National.

"Mr. Woods: Did you inquire as to whether or not that bondholders' committee, by the deposit agreement, had any authority to select the Trustee?

Mr. O'Brien: I object to that, if the Court please.

Mr. Woods: Well, he can answer yes or no whether he made inquiry.

The Court: Answer.

Mr. O'Brien: Just a minute. I want to make an objection.

The Court: You may answer.

Mr. O'Brien: I object.

The Court: That is surprising to me, you know. I have been under the general impression that nobody thought the court in a foreclosure case had the right to appoint a Trustee. I did not suppose anybody has seriously contended that such a court had the right to appoint a trustee. I know it has been done. I know these trust companies going into foreclosure cases, and getting themselves appointed trustee, but I did not suppose anybody seriously contended that they had any right to.

622 Mr. O'Brien: The upper courts have so ruled and you may have cases.

The Court: How are you going to bind somebody that is not in here?

Mr. O'Brien: Well they were in.

The Court: Well, we have them in. They were not brought in on your account.

Mr. O'Brien: Oh, yes, they were.

The Court: I cannot see how they could be in the court.

Mr. O'Brien: You have not seen the record, Judge?

The Court: No, I did not.

Mr. O'Brien: That is it, counsel has not showed it to you.

Mr. Woods: You did not mention it in your pleadings here, sir, that there is such a record.

Mr. O'Brien: I said the court has jurisdiction of the subject matter and the parties, and it did.

The Court: Well, just show that to me before we get through."

The Witness: I find it difficult to answer your question that when it comes to a question of confirming some action that I want done in an order of the court then it is all right, and that is the way I look at it. The Trustee has not appealed from any of these orders in any of these proceedings when it was in the Trustee's favor and when it was what the Trustee wanted done. The Trustee has not questioned the validity of the order under those circumstances. It isn't a fact that in the Superior Court and in this court the trustee stood outside as Trustee and defied both the courts to do anything about the revenues until the 17th day of May of this year.

623 We did not have any objections to the appointing of a receiver in the Superior Court. We did not appoint the receiver and we did not get him out just as soon as the reason for having a receiver was over. The receiver got out upon the agreement of all parties. The bondholders were represented in that agreement. I thought they were the principal creditors. We did not have to have the unknown owners in the proceedings sign on the line.

"Mr. Woods: Here is a property that has got debts of approximately a million dollars, did have when it came into this Court; do you think in a million years you could ever get that property in any kind of reorganization state, work it out over here on La Salle Street, where your valuation is one-fifth of the debt; do you think that could ever be done the way you were doing it over there on La Salle street?

The Witness: I don't—

Mr. Woods: This property or any other property?

The Witness: I don't know what you mean by your question, doing it over on LaSalle Street. Do you mean—

Mr. Woods: Well, outside of the court?

The Witness: Outside of the Court?

Mr. Woods: Yes.

The Witness: Outside the Superior Court?

Mr. Woods: Outside of any court.

The Witness: No, I don't think it could be done outside of court without have some court's jurisdiction."

The Witness: I don't know of my own knowledge that litigation has gone on in the state courts for ten years about this property. I have no idea how much money
624 has been spent on that litigation. I thought that the proceeding in the Superior Court would enable the property to be reorganized. I thought that the decree would get the property out of trouble.

I recall that I stated a while ago that I knew the Granada Hotel Corporation, the old corporation, had been dissolved by the Attorney General. I don't believe I could answer the question as to whether or not I think that any court on a proceeding started more than two years after a dissolution can enter a decree that has any validity at all against a defunct corporation; that requires legal knowledge that I do not have. My opinion is that foreclosure proceedings could not have been completed and go to sale and eventually you would have good title.

"Mr. Woods: Well, let me ask you this question: Is a judgment against a dead man any good, even if you start proceedings before he dies?

Mr. O'Brien: If the Court please, I object to that. It seems to me—

Mr. Woods: He is a lawyer and will frankly—

The Court: Let him answer.

The Witness: I don't know.

The Court: When did you get a decree in the state court?

Mr. Woods: The date is December 18, 1936, your Honor.

The Court: December 18, 1936?

Mr. Woods: You have no question about that decree being perfectly all right; but you think that if this Court decides that it has jurisdiction under 77B proceeding and you go to the Circuit Court of Appeals, and that court says, 'Yes, the jurisdiction is good,' that you can not rely on that at all, and you must go to the Supreme Court of the United and get an answer there, is that right?

The Witness: I cannot answer that question gen-
625 erally yes or no without generalizing. It depends upon the circumstances and upon the facts that exist.

Mr. Woods: Make the answer any way you like, tell the court.

The Witness: Well, I believe we could rely upon a foreclosure proceeding and work out a valid title to the real estate securing this bond issue. I believe that if the normal requirements of the 77B proceeding were present and this Court said it had jurisdiction we would not resist it for one second. If we were advised by counsel that the facts as they exist in a particular case are such that it does not meet with the requirements of the law and that any title coming out of the reorganization and that proceeding would be involved, we would have an absolute duty to appeal it to the highest court of the United States.

Mr. Woods: You did not think that it is a normal requirement to have a live defendant; that is not necessary?

The Witness: I cannot answer that, Mr. Woods.

Mr. Woods: Well, do you or don't you think that?

The Witness: No."

(Mr. Woods then requested that the Court Trustee's Exhibit O and Court Trustee's Exhibit O-1 be marked for identification.)

The Witness: I would not know if it is a fact that the Trustee had an arrangement about this building and a lot of other buildings that had been through the Cody mill, by which the Trustee paid Mr. Hall to allow the Cody interests to know what was going on in the management of all these properties.

"Mr. Woods: You did not know that? Just—

Mr. O'Brien: No, and that is not the fact either, Mr. Woods.

626 Mr. Woods: All right, if he don't know, he don't know.

Mr. O'Brien: Nor anybody else."

Mr. Woods thereupon asked the witness to look at paragraph 13 of the petition of City National Bank and Trust Company and to refresh his recollection about the relation of City National Bank and Trust Company to Mr. Hall.

The Witness: I have read that paragraph. It would not change my answer that I do not know about an arrangement about this building and a lot of other buildings that have been through the Cody mill by which the Trustee paid Mr. Hall $50 a month to allow the Cody interests to know what was going on in the management of all those properties, but this petition does indicate that Mr. Hall had been retained in order to keep the Cody Trust Company informed of the status of this issue from time to time.

Mr. Hall was there because the Central predecessor had sold only, as I recall it, two-fifth of the bonds and the other three-fifths of the bonds were sold by others who wished them to keep you advised of the status of the management of the building.

"Mr. Woods: And you thought it was proper to use the trust funds for the purpose of employing a representative of the Cody interests, is that right?

Mr. O'Brien: I object to that, nobody said he was a representative of the Cody interests.

Mr. Woods: That is what the petition says I submitted there.

The Court: Overruled.

627 Mr. O'Brien: Well, I don't read it that way."

The Witness: I don't believe I was aware of the arrangement at the time it was entered into. I don't know when it was made. I believe it was made by the City National. I don't know if the document is in writing. I don't know whether there is one or not.

Thereupon a recess was taken to two o'clock P. M. on the same day, Thursday, September 23, 1937.

Met pursuant to recess September 23, 1937 at two o'clock P. M.

Mr. Woods stated that Mr. Rosenstone, would examine certain witnesses called by Mr. Woods.

MR. STANLEY D. TILNEY, called as a witness on behalf of the Court Trustee, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Rosenstone.

My name is Stanley D. Tilney. My address is 300 South Kensington Avenue, LaGrange. I am a certified public accountant, pursuing that profession at the present time. I know Mr. Woods, the Trustee in this case.

I have been to the Granada Apartments and have inspected the records and books at its office. There were several sets of books at the hotel running from inception of the Granada Corporation in April, 1929. Those books are rather complete to 1934 when there was a new set of books instituted which omitted to show the capital
628 accounts, they being confined chiefly to operating accounts of the hotel and they continued until 1937 when there was a change in the Trustee. The change in

the bookkeeping method was made about the time Central Republic took charge as Trustee in possession. I did not find a complete set of vouchers evidencing payments and disbursements and the examination I made indicated to me certain vouchers were not there. The period of time of the missing vouchers were from 1934 on. That was the time that the change in the bookkeeping system was attempted. The missing vouchers pertained chiefly to disbursements that were made through the Trustee's account and applied on taxes generally and a number of other items.

There was a transfer of funds made to what is termed the trustee's account which was money accumulated over and above the amount for operating costs that was paid directly from the office of the hotel. As far as the record indicates the Trustee's account was kept down at the City National and the transfers were made to the City National Bank approximately once a month.

I have a copy of the answer that was filed by the Trustee. I will turn to page 12. I furnished the information to the Trustee that is contained in paragraphs 21 and 22 as follows:

"Against right and authority during 1936 claimant bank says they have withdrawn for themselves and counsel cash from Debtor fund as follows:

Counsel fees, furniture, litigation, 1934.....$2000."

I obtained that figure from the books.

629 The next item, Trustee's foreclosure fees, $1608.56, was obtained by me from the books.

The next item, Master's foreclosure fees, $2552.80 was furnished by me to the Trustee and was taken from the books.

The item Court legal expenses, Harris *vs.* Tuttle, $167.50, was furnished by me to the Trustee and was taken from the books.

The item, counsel fees, 77B case, 1935, Harris *vs.* Tuttle, 297 U. S. 225, $3857.59, was furnished by me and that was also taken from the books.

The above items total $10,186.65.

On page 13 there is an item which refers to "Trustee took for itself as fees during calendar year 1934 $2850.79." That figure came from the books and was furnished by me to the Trustee. When I refer to books, I mean the books of account at the hotel.

I furnished the figure $3525.28 for the year 1935 and it was obtained from the books of account at the hotel.

I furnished the figure $3535.17 for the year 1936 and it was taken from the books of account at the hotel.

The figure $1433.05 for the year 1937 to May 17, the date of transfer, was taken from the books of account at the hotel.

The correct computation of the total is $11,364.42.

Directing my attention to page 17, with respect to certain claims and charges against the Arlington for service, the item $4080, appearing on the books as a charge against the Arlington Hotel or Apartment Building was for the year 1933. It was for refrigeration and water charges, and heating which arose from a monthly billing. It does not appear to be on the books of the Granada Cor-
630 poration now as it was charged off. I don't know the exact date when it was charged off. My examination was rather brief on whether the books indicated in any way whether or not any portion of the item was ever paid, but I would say that it was not paid.

Other than the examination I have made for the various items about which I have testified, I have examined the books from the beginning of the corporation, commencing with the transfer of certain assets and liabilities from the old corporation and carried on down annual periods which ran in fairly good sequence down to 1934. In 1934 the books were changed and the capital accounts were omitted from that time on. I also have taken a record of what the books show from the period 1934 to 1937, by like periods, omitting capital accounts.

The books as they stand now do not segregate all the way through, the operating expenses with respect to the heating, lighting and water. There is a certain period where it is shown and other periods where it has been shown generally as operating expenses. I was able to separate them so that for a certain period, the earlier part of the period down to 1934, so that I can comprehend what was spent in operating expenses for those items. From that time on the operating expenses are combined so that to segregate them as to any particular facility would require going into the subordinate records.

I know Mr. Schott who is sitting here. I went with him to the offices of the Granada several weeks ago for the purpose of furnishing certain information with re-
spect to the operating of the heating and power plant
631 for the years 1935 and 1936. I furnished Mr. Schott with sundry vouchers covering expenditures upon those various items during those years that were avail-

able at the hotel. Mr. Schott has those figures. Those figures that he has were compiled under my direction and in my inspection of the books.

I did not make a compilation of operating expenses for the years 1930, 1931, 1932, and 1933 in detail. 1934 was a separate year; that is when the Trustee came in and I furnished Mr. Schott with a combined total for the year, not in any specific detail. The figures which I have on this sheet to my knowledge do not include any operating expenses of the other two apartment buildings, the Arlington and the Lincoln Park Manor.

I made no examination of any books except just on the Granada. The expenses or disbursements include only the overhead that is on the record, not just the overhead in the engine room and boiler room, but with all the other expenses pertaining to the operation of the hotel, including the manager's salary.

You cannot indicate the items on this sheet that apply only to the cost of water, the cost of electricity, the cost of heating and overhead that goes with the dispensing of those things without reference to the charges on the other part of the building. It is combined with other items of operation cost.

Mr. Rosenstone then handed the witness the sheet.

The Witness: I have on that sheet all of the cost items, as I understand them, incident to the Granada furnishing heat, water, hot water and refrigeration which is to go to the other two properties. This sheet is all in my handwriting and was made up from those records at the hotel.

632 *Cross-Examination by Mr. O'Brien.*

The books which I found at the Granada Hotel premises for the period prior to 1934 were the regular books of account of the corporation itself, and beginning with March, 1934, a new set of books was carried on at the hotel premises and in a general way those books reflected the operating charges incurred and made in conducting the hotel business together with the revenues. It was not necessary to have such a set of books at the hotel premises in order to settle accounts with its guests because they kept a separate ledger on guests' accounts.

The books which were started in 1934 consisted of a ledger but it confined its information to the operating accounts and the revenue account. I don't know if it

was from those records that the amounts which were sent down every month was determined.

I found all of the operating disbursement vouchers at the hotel premises with the exception that the voucher jackets covering the electric light expenses did not carry the electric light bills for the period 1935 and 1936, I believe, and I did not examine beyond that. As far as my test checking went I found the operating vouchers there. I did not examine every voucher. In general, the vouchers which were not there were those evidencing disbursements made directly by the Trustee.

Those so far as I am informed were kept at the bank itself. I haven't seen the books or records kept at the bank. I had no occasion to ask to see them.

633 "Mr. O'Brien: If the Court please, as I said before, I have no objection to the exhibit, or rather, to this instrument Trustee's Exhibit Q on the ground that it is not sufficiently qualified; but on the face of it I do object to it as not containing data which is essential to the disposition of this question. The instrument purports to cover not only the operating charges which were spent at this time at the Granada Hotel, but it covers as well combined accounts concerning interest, depreciation on the building and various other items. My objection is this, if the Court please, in figuring out how much it cost the Granada to provide heat, refrigeration, cold and hot water, there are various specific charges which enter into that calculation, and which do not include most of the items here which are listed as a part of the total."

"Mr. Rosenstone: I understand, but, as I stated, that was put in merely for the purpose of comparison. We expect to call another witness.

The Court: Well, it may be received, it may be received. These experts may differ. One man may think certain items are necessary, and another man may think other items are necessary. This is what this witness thinks. It may be received."

Whereupon said document, marked COURT TRUSTEE'S EXHIBIT Q was offered and received in evidence.

The Witness: The first item listed on the Exhibit for salaries for the year 1936 in the sum of $8,694.87 does not include all of the salaries paid at the Granada for that year. It includes the salary of the manager and clerical help. It does not include the engineer's. The engineer's salary is included in a separate item.

634 The next item listed in the amount of $1244.56 generally covers the services of certain individuals working at the hotel for providing amusement to the guests.

The next charge is legal and auditing which for the year 1933 is $2,578.54. The general presumption would be that the legal has to do with ouster suits and the like.

The matter of office supplies in the sum of $556.97 for the year 1936 is for stationery for the front office of the hotel and stationery for the lobby and stationery and books for the office and things of that character.

The item exchange in miscellaneous in the amount of $949.58 represent the cost of exchange on bank checks and there are miscellaneous items included in that not otherwise specifically specified.

The pay roll in the amount of $23,362.21 for the year 1930 and $14,765 for the year 1933 covers the wages of people at the hotel and it applies to all of the other employees other than the administrative force included in the other item. It includes maids, engineers, waiters and various other workmen engaged on the premises. The engineer's salary is a relatively small portion of the total.

The item for gas for the year 1930 in the sum of $820.20 is for gas which is furnished to the hotel consumed by the tenants in the operation of the gas stoves in the kitchenette apartments.

The housekeeping staff expense in the amount of $241.65 is in connection with the housekeeper's operation and the same is true in connection with laundry and cleaning in the amount of $3,546.73.

635 The item charged for electric pumps is for replacements throughout the hotel.

The items for light and power for the year 1930, in the amount of $8,082.96, includes all of the light and power bills paid by the Granada as shown on the books. So far as I know it includes electricity for every purpose used there. It includes the operation of the elevator, lighting the lobby, and the various rooms and also the operation of any pumps.

The item for fuel oil and coal for the year 1933, in the amount of $7,066.96 is the actual fuel that has been purchased. I would not know about the consumption.

The item for repairs and maintenance during the year 1930 of $4,143.35 takes in all sorts of incidental repairs and maintenance items throughout the Granada Hotel itself.

There was no charge in 1930 for replacement of operat-

ing equipment and the charges range from $465 to approximately $2100 for the other three years. I do not remember what replacements were involved. They would be specified generally in that account.

The item of water for the year 1930 in the amount of $1766.64 and in the amount of $1949.22 for the year 1933 includes the actual bills paid by the Granada for those years.

I think that the insurance item for the year 1930, in the amount of $1452.04, includes insurance of every kind that was procured.

Underneath that schedule there is a further one which is intended to cover what is generally termed as fixed charges, particularly with respect to interest and depreciation and the bad debt provisions. The interest is shown separately as to the separate mortgages for each year, meaning the first and second mortgages and the notes.

636 The depreciation item is figured against the building and the furniture and fixtures. The item shown on Trustee's Exhibit Q are the items as shown by the books of the corporation for those years. Those figures do not represent any actual check which I made to see that all charges were included on the books. There is no way I can tell by looking at these figures, these operating items, such as pay roll, for example, just how much of the total of the item is included for say engineer's pay roll and from those figures, for example, as to light and power, I cannot tell you how much of the total shown here is used for light and power in operating the Granada elevators. I am not informed as to whether or not they perform in and about the Granada other service than ordinary engineering work. From those figures if they do there is no way in which I am personally able to tell just how much of the salary charged is allocable to the special additional service. These figures are a description from the books of the corporation for that period.

Redirect Examination by Mr. Rosenstone.

The Witness: I gave Trustee's Exhibit Q after it was compiled to Mr. Schott. I explained to him what it was. The omission of the year 1934 from the compilation was done because it was not possible to prepare the statement for the year 1934 in that form due to the fact that the books from which those figures were taken were continued to March 31, 1934 and not beyond that date. On March

16, the Trustee took possession and opened up a new set of books which started from March 17, 1934, so there is apparently an overlapping there, or the possibility of an overlapping, and there is nothing in the record to indicate a reconciliation between those two periods. I
637 haven't made that compilation for the year 1934 on account of lack of time in getting to it and lack of information.

Witness excused.

WILLIAM H. SCHOTT, called as a witness on behalf of the Court Trustee, having been first duly sworn was examined and testified as follows:

Direct Examination by Mr. Rosenstone.

The Witness: My name is William H. Schott and I live at 426 Diversey Parkway, Chicago. My business is an engineer, and I have been engaged in that business since 1895. From '85 to '89, I was with the Thompson & Houston Electric of Lynn, Massachusetts, getting my training. When I was employed by them I did steam and electric engineering. I was transferred here by the same company and was put on the road as traveling superintendent. I left their employ and for the next five years I was with Western Electric Company. My duty there was traveling superintendent. I then came to Chicago and opened up a consulting office here on October 1, 1895. I specialized in the utility field. By that I mean electric, water, gas, light, heat and the whole field. I took up in 1898 the question of specializing in heating. That developed the Schott System of heating. I had a hot water system and I had steam, both from pressure and from vacuum, and worked from several different points from that system. That system is still known as the Schott System all over the country. It is in use in Indianapolis.
638 We have a plant down there with 30,000 H. P. in it.

I know Mr. Woods, the Trustee in this case. I first met him in regard to this matter about six weeks ago.

I made an inspection of the Granada Hotel, 525 Arlington Street. I am familiar with the Arlington property and the Lincoln Park Manor property in so far as they are operated in connection with the operations of the Granada. With reference to the Granada, the Arlington is across the street in the front of the hotel and the Lincoln Park

Manor is in the rear facing on Fullerton. There is an alley between the blocks.

After I had gotten my general data together I called upon Mr. Tilney for the records so far as those departments are concerned. I went through the accounts and segregated out those figures that applied against that department for the years 1935 and 1936. I obtained those figures when he was present. I called off the items and he got out the vouchers and I segregated out that portion applying against those departments. As to the inspection I made with reference to operating expenses so far as the pay roll was concerned, it was simply the labor employed in the boiler room which was chargeable against that department. The various subdivisions which I made in making up my total figures were pay roll, electric bills, water bills, maintenance, and all repairs actually made. When I say pay roll, I mean pay roll that relates to that particular branch of operating cost. In arriving at that figure, I did not take into consideration the manager's salary or the legal fees, and in connection with the foreclosures and this proceeding. I did not take into consideration the help around the hotel.

639 The service furnished to the Lincoln Park Manor and to the Arlington was heat and cold water and refrigeration and, of course, in season the heating of all of the hotels. There is a central plant with respect to the system of refrigeration. That is also the case with the other hotel, the Lincoln Park Manor.

In the Arlington they have a vacuum system of heating that is steam heating, the same is true of the other hotels. The Lincoln Park Manor and the Arlington have a heating system but have no plant to operate it, that is they have radiators but have nothing to supply the heat with.

In the Lincoln Park Manor and the Arlington there are ice boxes with coils but no units by which that energy can be supplied.

The connection between the Granada and the Arlington is made by a system of pipes which lead through the building and across the street through a tunnel to the Arlington. I believe that the pipes belong to the Granada up to the Granada property line and the rest of the system belongs to the respective hotels.

In reaching my conclusion on costs, I took 1935 and 1936 as a basis and took the average cost of those years and corrected it for the costs for the year 1937. In 1937 the only item in which there was a variation was the cost in

oil and this cost was brought up to the market price for 1937.

In determining the heating costs, the basis of determination was the cubic contents of the building. I measured up all three of the buildings from drawings to establish the cubic contents of the heating space. I had the original drawings and inspected them at the Granada Hotel. The three buildings had practically the same plan and specifications and the same type of construction. It would
640 not cost more per cubic foot to heat one building than another. In determining the refrigeration costs I took the cubic contents of the boxes to serve as a base. The hot and cold water was prorated on the same basis as the refrigeration. Each building carried its percentage which was based upon the number of connections. In other words, every unit has got its ice box, its bath and its other water services, so that if you have a given number of ice boxes you have a like amount of other water services, so you prorate it on the same basis as the ice boxes.

I made a report of my inspection and conclusion to the Trustee. The document which you hand me bears my signature. I delivered this to Mr. Woods about the date it bears, September 10.

Whereupon Court Trustee's Exhibit R was marked for identification.

Mr. Rosenstone then showed the witness Trustee's Exhibit Q.

The Witness: I have seen that document before. Mr. Tilney gave it to me. I did not from that document make up or compile the figures on the cost of operating the heating plant and the furnishing of refrigeration service and water service to these other two buildings, for the reason that I simply used it as a comparison to see how the items compared over a series of years. I took no figures from that document in making my conclusions.

In my determination it was necessary to make an appraisal of the installation of boiler, installation in fire room, tanks, heaters, etc. and the refrigeration plant in the Granada Hotel, as that was to establish the amount of investments in those apartments. I made an ap-
641 praisal and when I got through my figures were so near those previously established that I accepted the previously established values. I was shown this previously established valuation after I had made this report or prior to the time it was furnished, which were appraisals furnished by Mr. Lewis. Mr. Lewis is a con-

sulting engineer here in town. He apparently made a report in 1929 on this property. I have forgotten to whom he made the report. It was to some trust company prior to this proceeding, as I understand it. The figures in the appraisal that I used applied to the boiler installation complete with all accessories which amounted to $19,000, pumps, tanks, heaters, and so on which amounted to $9,230 in addition to the $19,000, and refrigeration plant complete, which amounted to $16,280.

I measured or computed the number of square feet in the boiler room of the Granada. There are 7,990 square feet occupied by the plant. There are 86,000 cubic feet in the building. I computed the cost per cubic foot at 70¢, less a depreciation of 24%, which represents a present value of $45,752.

In determining the split between the three buildings, I arrived at a proportion on the heating end of it: Granada 50%, Arlington 29.76%, and the Lincoln Park Manor 20.24%. On the refrigeration the split was 48.95% to the Granada, 33.434% to the Arlington, and 17.61% to the Lincoln Manor.

I arrived at those percentages by determining that Gr[illegible]a has just the same cubic contents as the other two [illegible]tels so it is entitled to carry half the expense as to heating.

642 In reference to the refrigeration, the Granada has 558 feet or 48.95%, the Arlington 486.5 feet or 33.434%, and the Lincoln Manor 309 feet or 17.61%.

As to the figures that I have on each item which entered into this total cost what it was for and the amount for each year I will give 1935 first:

Pay rolls	$ 2,460.00
Electric Bills	7,278.02
Water	1,992.31
Oil	7,522.36
Maintenance	212.00
Miscellaneous	120.00
Total	$19,589.69

For the year 1936:

Pay rolls	$ 2,460.00
Electric Bills	7,356.82
Oil	7,648.09
Water	2,057.44
Maintenance	1,091.27
Miscellaneous	141.00
Total	**$20,733.62**

I then took the average of those two years as a basis for establishing the 1937 costs and added that figure to the difference of the oil. Everything else was the same.

There are three electric meters in the Granada Hotel, one that meters the current used by the halls of the building which would be a direct expense to the Granada Hotel. There is another meter that checks the current for the apartments, that is a Granada expense and not taken into consideration in the report. The other meter is a general power meter to determine the amount of current used by each department in the general split.

643 The average for the two years for the lighting department is $7,317.42.

The split to the Granada is house lighting $2,292.54, power $5,024.88, making a total of $7,317.42. The $5,024.88 power item is split 77% to refrigeration, or $3,869.16; heating 10%, or $502.49; water 8% or $401.99; elevator and laundry 5%, or $251.25, making the total of the power requirements appearing as the total power cost.

In determining the percentages used I checked up the power used by the refrigeration department and by the heating department and the water department and the elevator and laundry and made a split, taking the one supplied from the max demand meter and the balance by splitting it up by meter readings. The vouchers for the electric lighting bills had the meter readings and I got the constants of the meter so I could reduce it down to actual readings. There were no separate electric light bills. I used the vouchers which carried the details of the bills, but the bill itself was not attached to the voucher except in one case. I just simply had the average of the readings of the meter, but it had no record as to the constants, but I had records of the constants so that I could make a check. I mean by constants that you get the k. w. from the meter where there is a direct reading and if it is 60 you multiply by sixty, and the other by 120, so you take the constants and multiply the readings by these figures that they apply to which gives you the k. w. consumption which was actually consumed. The cost of electricity for those three years is based upon actual consumption as shown by the records in the Granada and the meter readings.

In regard to the oil, I determined the amount expended during those two years by taking the amount of oil which was purchased, but I made up my records on the records.

of the actual consumption. In 1935 they purchased
644 more oil than they used, but in 1936 they used more oil than they purchased, so the storage was depleted just that much. So I only charged to the operation the actual oil used as shown instead of the oil purchased. They have two 8000 gallon tanks.

I determined the water consumption of city water from meter readings. Maintenance figures were for miscellaneous repairs that belonged to the boiler room and the pipe system used in the refrigeration. At one time there was a pump out of order and that was put in shape and there has been some miscellaneous maintenance of the boilers which applied to the burners.

The item of miscellaneous charges consisted of little odds and ends. They were shown as boiler room supplies and for the refrigeration end of it; so, not having an absolutely accurate record, I charged 50% to each department, charging it on the heating basis.

I determined the pay roll from the physical vouchers which shows payment for the boiler room.

There were three employees in the boiler department. I imagine the chief engineer has general charge of work outside, through the house, miscellaneous repairs, but when we take into consideration the fact that he is in the boiler room all the time during the heating season and those things are done probably through the dull season, I could not see why it should not be carried by the heating department and the refrigeration department, because that is what he is employed for. The three employees I spoke of take care of the refrigeration department. The only man who gets outside is the chief man, the other two men are in the boiler room all the time. I have not segregated
645 the salaries but they total up to an amount of $2,460 for the year.

From the figures which I have given you, I made an apportionment in dollars and cents against the Arlington, the Lincoln Park Manor and the Granada.

There were 21,050,000 gallons of water used which cost 6.8¢ per thousand, an item of $1,431.40.

I am now talking of refrigeration and water consumption in connection therewith. As to electric power, there was 241,822.5 k. w. at 1.6¢ per kilowatt. That was the average of what the power costs, or $3,869.16; one-half of the labor $1,230; one-half of the repairs $600; insurance and taxes $393.09; 15% of $16,280 being the cost of plant in

order to cover interest, depreciation, supplies and maintenance, $2,422. The total of that made Granada's part $4,796.18; Arlington $3,331.91, Lincoln Park Manor $1,655.54, or a total of $9,965.65. That was set upon a basis of 48.95% to the Granada; Arlington 33.434%; Lincoln Park Manor 17.61%. Then to the Arlington and the Park Manor I added 20% of the operating profit, of the actual operating item, amounting to $606.38 on the Arlington and $331.11 for the Lincoln Park Manor, making the ultimate total—Granada $4,797.18, Arlington $3,998.29, Lincoln Park Manor $1,986.65, or a total of $10,963.14.

As to the heating, there is a split on the basis of 50% for the Granada. The figures are labor $1,230, electric power 31,375 k. w. at 1.6¢, or $502; 125957 #6 oil at 4.75¢, or $5,988.58; miscellaneous repairs $600, insurance and taxes $393.09; 15% of $19,000 investment, or $2,850, an operating profit for Arlington of $687.60 and Granada of $467.77 totaling $1,155.77; which makes a grand total of Granada $5,777.83; Arlington $4,126.88; Lincoln Park Manor $2,806.63; or a total of $12,711.34.

646 I made a similar computation on the water which was 8,764,000 gallons of water at 6.8¢ per gallon or $505.35; 45,616 gallons of oil at 4.75¢, or $2,167.85; 25,124 k. w. of power at 1.6¢, or $401.89; miscellaneous repairs $100; insurance and taxes $196.55; 15% of the value of the property of $9,240, or $1,384.50; 20% of the operating profits, Arlington $228.64, Lincoln Park Manor $195.97, total $484.61, making a grand total of Granada $2,042.40, Arlington $1,731.86, Lincoln Park Manor $1,175.85; all totaling $5,330.85.

Now, on the power not included in those subdivisions, there was chargeable to Granada 1,432,837 k. w. at 1.6¢ which made $2,292.54; then the elevator and laundry part of the power was 157,025 kilowatts at 1.6¢, or $251.24, or making chargeable to Granada $2,543.78.

Now in the grand total or recap on that split is Granada $15,440.93, which includes refrigeration, heating, water service and the house lighting and laundry and elevator service; for Arlington $9,857.03, and that includes refrigeration, heating and water service only; Lincoln Park Manor $5,969.13 and that includes refrigeration, heating and water service only.

That makes a grand total of $31,549.01, but to get that we have to add in there the house lighting $2,543 chargeable only to the Granada.

On the basis of those figures my recommendation as to the amount that should be paid per month as to the Arlington first is this, and this does not include any allowance for interest on investment for the space occupied by the plant, but includes charges as to operating items and for 15% of the investment and 20% of profit on the actual operating for the Arlington and Lincoln Park Manor. For the Arlington Apartments $9,857.03 per annum or an
647 average of $821.24 per month. The payment should be made on the basis of $1,067.05 per month for the months of January, February, March, April, October, November and December, and $477.50 a month for the months of May, June, July, August and September. In other words, the hotel should receive its compensation on the basis of spending its money. The sums upon which that recommendation is based equal the total amount for the year.

Now in the case of the Lincoln Park Manor, the amount is $5,569.13 per annum, or an average of $497.44 per month for the months of January, February, March, April, October, November and December, and $263.54 per month for May, June, July, August, and September.

Mr. Rosenstone then offered in evidence the report of Mr. Schott and Mr. O'Brien made objection thereto, and upon Mr. O'Brien's suggestion the Court reserved ruling until after cross examination.

Whereupon said document was received in evidence.

The Witness was thereupon excused subject to further appearance for cross examination.

CLAUDE S. PARKER called as a witness on behalf of the Court Trustee having been first duly sworn was examined and testified as follows:

Direct Examination by Mr. Rosenstone.

My name is Claude S. Parker. I live at 525 Arlington Place. I am manager of the Granada Apartment Hotel. I was manager on Monday, May 17, 1937.

Since that date I have been making reports to the Trustee in this case, Mr. Woods, on forms similar to this which you hand me.

648 Mr. Rosenstone then showed the witness Trustee's Exhibit O for identification.

The Witness: I made up that report on the morning of the 18th and delivered it to Mr. Woods as near as I can remember a couple of days later. I handed it to him.

As to the item of deposit on May 17, 1337, in the amount of $1183.87, I deposited this money with the City National Bank and Trust Company.

The account in which I deposited the money is the regular account which the hotel has with the bank. I did not sign checks on that account. Mr. Edward Hall signed the checks and J. R. Hubbart countersigned them. This money was taken down on the 18th to City National Bank and Trust Company.

I knew Mr. Woods had been appointed Trustee on May 17. I deposited that money in the City National Bank on the 18th because I did not have any further instructions to do otherwise.

With reference to the deposit, or with reference to the $400 house fund, Mr. Hubbart called me with reference to the $400 house fund. That is not included in the $1187. With reference to the $1187 I don't recall who asked me to take that money down to the City National. I knew that Mr. Woods had been appointed Trustee before I took the money down to the bank. I had a petty cash account in the hotel. The amount was $400 for the use of the petty cash fund for the front office. On May 17 it amounted $400 and on May 18 the same. The big majority on May 18 in the account consisted mostly of checks. I turned them over to Mr. Hubbart after I received a receipt for them. I took the account down in the afternoon of May 18th, about three o'clock, as near as I can remember. I know it was after banking hours.

649 Mr. Rosenstone then showed the witness Court Trustee's Exhibit O-1, marked for identification.

"The Witness: Yes, that is the receipt I received from Mr. Hubbart. Mr. Hubbart himself called me and asked me to bring the money down. I told him I had no authority to bring it down. Then he spoke a few words, I don't remember what he said, and in a few minutes he called Mr. Bickel. Mr. Bickel talked to me about that. He was very curt about it. He demanded that I bring it down right away. I said I would not because I didn't have any instructions from the agent, Mr. Edward Hall, at that time. He said if I did not bring it down right away he would send some one out to pick it up and bring it down. I said all right they may come out but I will not turn it over until

I get proper instructions to deliver it to the City National Bank."

I was trying to locate Mr. Hall and get his opinion on what I could do. In the meantime Mr. O'Brien called me on the telephone and told me it was o. k. to release the $400. I took his word for it that it was o. k. and got a cab in order to get down there as quickly as I could after Mr. O'Brien told me it was o. k. I was not afraid of what Mr. O'Brien said to me.

"The Court: Who did you take your orders from?

The Witness: Who did I take orders from?

The Court: Who did you take orders from prior to this time.

The Witness: From Mr. Edward Hall of the City National and Mr. Hubbart."

650 *Cross-Examination by Mr. O'Brien.*

The Witness: I worked for the City National Bank as Trustee several months prior to that time. The pay I got was a City National Bank check signed by Mr. Edward R. Hall and countersigned by Mr. Hubbart. As far as I know Mr. Hubbart was employed by City National Bank. He was also paid by City National Bank. I was working under Mr. Hubbart and I assume that Mr. Hubbart was but I don't know. Mr. Hubbart often came out to the premises and gave me instructions about things relating to the operation.

I don't recall that the $400 cash fund was deposited by the City National. I would have to check back and find out. The $400 cash fund was not the receipts of May 17 or May 18. It was a cash fund maintained by the hotel.

The receipts which were deposited in the commercial account were the receipts to May 17. I don't recall whether Mr. Bickel told me that the account was to be broken down as of May 17. The bank started in to break the account as of May 17 and the breaking down of the account involved delivery to the new Trustee of receipts from the date of the breakdown and the retention of it by the old Trustee of the funds up to that time.

I don't believe I saw Mr. Woods on May 17, 1937 or May 18, 1937. As far as I can remember it was about the 20th.

Redirect Examination by Mr. Rosenstone.

The Witness: The deposit of $1183.87 as shown in my report of May 17 did not include any moneys collected on May 17. I can't just say how many days it repre-
651 sented, whether it was a couple of days or not. We handled the operations up there, we did not bank every day. Now that may represent two days banking, so far as I know, but I can't say offhand how many days it does represent.

Mr. Rosenstone thereupon handed document to the witness.

The Witness: That report on May 17 included receipts of May 17 and also included the $400 cash fund. After that deposit was made which included the petty cash fund there was no money on hand at the hotel to operate on. It stripped us clean.

Whereupon COURT TRUSTEE'S EXHIBITS O and O-1 were offered and received in evidence.

Whereupon an adjournment was taken until eleven o'clock A. M. of the following day, Friday, the 24th day of September, A. D. 1937.

Met pursuant to adjournment on Friday, September 24, 1937 at eleven o'clock A. M.

Whereupon the cause was continued by the Court until two o'clock P. M. of the same day, Friday, September 24, 1937.

Met pursuant to continuance Friday, September 24, 1937 at two o'clock P. M.

"Mr. Woods: We have two matters here, your Honor, which have been separately heard up to this point; one is a claim of the Indemnity Insurance Company of North America, claim #8; the other is the petition of the City National Bank and Trust Company on account accrued. At the hearing last Monday on the claim #8, your Honor desired to appoint a court appraiser to appraise cer-
652 tain property which your Honor thought should be definitely established in this record, as to its value at the time of the issuance of the receiver's certificate in August, 1933.

The Court: You say I desired to do that? I had no desire to do anything except as suggested by counsel for the complainant that we appoint some fair and impartial appraiser.

Mr. Hampton: Pardon me, I did not hear the last part, your Honor.

(The Court statement was read by the reporter.)

Mr. Woods: I understand this gentleman is here (indicating) and he is ready to make his report. Now the Court Trustee desires this report and the examination of this appraiser as a witness be a part of both of these proceedings because the evidence is pertinent to both of them with reference to this receiver's certificate.

The Court: You may put him on and examine him and then counsel for complainant or counsel for the mortgage trustee, whoever they may decide between themselves, may examine first and then the other one examine if they desire.

"Mr. Hampton: Thank you.

The Court: Proceed gentlemen.

Mr. Woods: Will you mark this Exhibit O, Court Trustee's Exhibit O-1 and 2? (The documents produced consisting of two sheets was marked 'Court Trustee's Exhibit O-1' and 'Court Trustee's Exhibit O-2.')

Mr. Woods: I have here, your Honor, a bill of sale which was made by International and Industrial Securities Corporation on the 18th of August, 1933. It ap-
653 pears to describe the specific property which was transferred at the time and in connection with the delivery of this receiver's certificate. Counsel and I agreed the other day that this document would be the basis of the physical personal property which this witness would examine and would make his report to the Court. I desire to put this in evidence and so we will have a definite statement of the property itself.

The Court: Very well.

Mr. Woods: This has been marked Court Trustee's Exhibit O-1 and O-2. There are two sheets.

Mr. Hampton: What is that O?

Mr. Woods: O-1 and O-2.

Mr. Hampton: Now there is a statement of Mr. Woods there that I want to—I don't want any misunderstanding on that either, Mr. Woods, that he says he is making a report. I specifically told Mr. Woods we would ask that he testify and we would have the right to cross-examine, not agree that he would make a report."

J. A. LENZ, a witness called on behalf of the Court Trustee, being first duly sworn was examined and testified as follows:

Direct Examination by Mr. Woods.

My name is J. A. Lenz. I live at 2551 Ainslee Street, Chicago, Illinois. I am active in business at the present time, repairing furniture. I have been in the furniture business forty-three years. I have bought, sold and manufactured furniture for fully thirty-five years. In
654 some instances that included used furniture, and I have served, on quite a few occasions, as appraiser in used furniture.

I was asked to go up to the Granada Hotel, 525 Arlington Place. I took this document which has been marked Court Trustee's Exhibit O-1 there in order to get the description of the personal property that I was to examine. I made the examination on September 22, 1937, just a few days ago.

I made an appraisal form a physical examination of the property itself, from what I could see. I guess quite a bit of it is no longer there. There were pieces there of all the different kinds of property that are described in that list, but not all of each kind was there now. I have made a written report.

Mr. Woods then requested that Court Trustee's Exhibit O-3 be marked for identification and handed the Exhibit to the witness for examination.

The Witness: That is my report on this appraisal. I am willing to tell this court and do tell this Court that in my opinion as an appraiser of furniture the value of the items which are listed there as of August 23, 1933 are the several sums which are shown on that sheet.

Mr, Hampton: Objected to.

Mr. O'Brien: Just a minute, I object to that, your Honor, first on the ground that the witness patently does not qualify; and, second, on the ground that he has not had the opportunity and it cannot be possible for him to make that examination; and third, on the ground that he does not specify what basis he has used in determining the value.

The Court: He does not specify what?

655 Mr. O'Brien: He does not specify the basis used in determining value.

The Court: He does not have to do that. You can qualify him, find out what he knows about furniture; what he has done; let him tell the detail of what he has done about it.

Mr. Woods: Kindly tell the Court in detail what you have done in reference to buying and selling of furniture.

The Court: Manufacturing.

Mr. Woods: Manufacture of it and appraisal of it in the years you have been dealing in furniture.

Mr. O'Brien: Well, I want to object to that, your Honor, I have not heard any furniture testimony yet.

The Court: Objection overruled.

Mr. Woods: Proceed.

The Witness: As I stated in reply to your question previously here, that I have had 35 years of actual experience in manufacturing, buying and selling articles outside of my own manufacture. I conducted two display rooms in the City of Chicago here. In each I dealt direct with the public; I have conducted wholesale manufacturing business from my factory in which I have been located over 25 years.

Mr. Woods: That experience was here in Chicago, Cook County, Illinois?

The Witness: Yes, sir, right here in Chicago, right in Chicago.

Mr. Woods: I think that is sufficient, your Honor.

The Court: What else is there? The form of your question was bad. You are asking him—you are asking him if he is willing to state. Just ask him his opinion, what the fair, cash market value is—what it was in August, 1933.

656 Mr. Wood: Have you an opinion from the examination of this furniture, carpets and so forth, as listed on your report—have you an opinion as to the fair cash market value in the City of Chicago as of August 23, 1933?

The Witness: I have.

Mr. Hampton: I object to that.

Mr. Woods: What is that?

The Witness: If you take into consideration—

Mr. Hampton: Just a minute.

The Witness: The way my report on the Granada—

The Court: Just a moment.

Mr. Hampton: I object to the form of the question as assuming facts not in the record. I think the proper

way is to ask the witness what his value as to each one of these things is.

The Court: Oh, now we are not going to fuss about that. We are going to get through this some way. Answer the question.

Mr. O'Brien: I further object to it on the ground he did not say at what time—

The Witness: I have examined several of the items—

Mr. O'Brien: Just—I want the Court to rule on that.

The Court: Just answer the question. Do you know what the fair cash market value of what you saw was in August, 1933?

The Witness: Yes, sir.

The Court: All right.

Mr. Woods: Have you used those values which you know are the values of that kind of furniture—

The Court: Just ask him what the fair cash market value of that kind of furniture was when you saw it; of the kitchen cabinet; of the large china closet, what it was of the in-a-door bed, what it was per yard of Ozite—

657 Mr. Woods: What, in your opinion—

The Court: —and the rest of it is computation: Anybody that wants to cross-examine can.

Mr. Woods: What, in your opinion was the fair cash market value of the carpet per yard?

The Witness: For removal purpose not over 25¢ per yard.

Mr. Hampton: I move—

Mr. Woods: And the Ozite?

Mr. Hampton: Just a moment please.

The Witness: Not over 2¢ per yard.

Mr. Hampton: Please.

Mr. Woods: And the in-a-door beds?

The Witness: In-a-door beds not over $6.

Mr. Woods: And the kitchen cabinets?

The Witness: Not over $8.

Mr. Woods: And the china cabinets?

The Witness: Not over $3.

Mr. Woods: And the totals you have computed here from those unit figures are correct computations, are they?

The Witness: Yes, sir.

Mr. Woods: And you made them?

The Witness: Yes, sir.

Mr. Woods: And the total value of all that property

as you have computed it from those unit figures is how much.

The Witness: $3,392.30.

Mr. Woods: I offer this document in evidence as Court Trustee's Exhibit O-3.

Mr. O'Brien: Objected for the same reasons heretofore assigned.

The Court: Let it be received.

Mr. Hampton: And for the further reason, it is
658 not the measure, the proper measure of value, removal value.

The Court: What do you mean by removal value, Mr. Lenz?

The Witness: If it would have to be tore out like the kitchen cabinets, if the kitchen cabinets and carpets would have to be tore out, if some dealer would purchase the entire lot to dispose of it in small parcels, it would be considerable expense attached to the removal of things; take considerable labor in loosening up the built-in sideboards and things; tear up the carpets and quite a bit of expense hauling out of there and I am practically positive that no dealer in the city of Chicago, or outside, would make any better offer as to the statement I have made of it.

The Court: Let the testimony stand."

Whereupon COURT TRUSTEE'S EXHIBIT NO. O-3 was received in evidence.

Cross-Examination by Mr. O'Brien.

The Witness: I have been engaged in the business of manufacturing furniture between 25 and 30 years, principally upholstered furniture. I have also been engaged in the business of selling furniture. In former years the name of my company was Rand & Lenz, Manufacturers. That was my father-in-law and myself operating the factory. For the past eighteen years the business has been conducted under the name of Lenz Furniture Shop. I was also in the wholesale business while we were conducting the factory which was until about nine or ten years ago, and since about 1923 I have been operating a retail
659 business at the same time. In the wholesale manufacturing business my sales were to retail dealers exclusively, and in my retail business I sold to the general public. I made the same kind of upholstered furniture

as Karpen Brothers, Fenske, Valentine, Siever, and Mahrer Brothers. I made the same styles in some instances better quality, in other instances perhaps cheaper quality. I sold practically every furniture dealer of any consequence in the City of Chicago and shipped furniture to every state in the Union. I have sold the large mail-order houses in the City of Chicago, and have conducted the retail business where I sold to the public direct.

I never saw one of these kitchen cases at the premises knocked down. These kitchen cases were not of the type that could be utilized in apartment buildings or a house unless they were rebuilt. They are all specially built in there, I think, excepting the steel cabinet.

I do not know the make of the in-a-door bed that was used there. I haven't paid any attention to the name of them because that is very immaterial.

I examined one of the apartments in the building. I noticed the way the in-a-door beds were hung on to the door panels by hardware. The beds are ninety-nine times out of one hundred stock beds. I cannot say that I paid any particular attention to who was the manufacturer of these beds. You can get these beds only from the manufacturers that have the patent rights on it. You can get them from practically any furniture dealer in the City of Chicago through the manufacturer direct. Undoubtedly all that furniture there was made only by one manufacturer.

The in-a-door beds have legs at the foot. At the head they are usually resting on the hinge that they are
660 attached to and are without legs at the head. About the only places a local furniture retailer could dispose of the beds is for a hotel and apartment rooming house. That would assume that the hotel or apartment rooming house had built into it the particular kind of paneling and hardware to which those beds might be attached. All of this stuff has very little value outside of the building.

Cross-Examination by Mr. Hampton.

The Witness: I saw these kitchen cabinets They are still in use in the hotel. They are apparently still in good condition. There is not a tremendous lot of wear showing on them. Of course, it would be quite difficult to detect that even because they have undoubtedly been painted

over on several occasions and for that reason it is absolutely necessary to examine that very closely to find out just what exact condition the woodwork is in. I examined them just ordinary as you can examine them through the finish and by opening up a few of the drawers and things in there to see what condition they were in. They would serve the purpose of a new one in the place that they occupy at present.

Cross-Examination (Resumed) by Mr. O'Brien.

The Witness: I did not notice that in the rear of each of the cabinets opening out into the corridor that there was a service door. I only saw the front of the cabinets. In examining them from the front I opened the top door in there to look into it and the construction of things. To the best of my recollection there is no service door in the back of these cabinets. Of course, there would not be any way of coming into it. I looked at the base of the 661 cabinet. There is the refrigeration piping in the bottom which is not included in my report. That is the coils of the refrigerating plant. I have not paid any particular attention to how these were let into the cabinet because they were not included in my report. The cabinet undoubtedly has a floor of its own. I have not noticed it particularly but these cabinets are usually constructed in sections outside and brought in there to be assembled in there. I cannot tell you if this cabinet set on the floor of the kitchen or how it was set in there. To the best of my recollection, the cabinet base of the cabinet is elevated above the regular floor.

Redirect Examination by Mr. Woods.

The Witness: I went up alone to make this examination. Mr. Parker showed me such items as I asked for. I never saw you anywhere except here in the courtroom. I don't know you at all. I do not know any of these attorneys here. To my knowledge I have never seen them before.

The Court: What, if any, instructions did the Court give you in regard to this matter?

The Witness: My instructions as best I can recollect them were to try to make a report of valuation of the property in question during the year 1933 for removal purpose or in other words for a forced sale.

Mr. Hampton: Forced sale?

The Witness: Not that those words were used exactly by his Honor, but that was the impression I was under; that if—that my valuation was to be what they were worth to an outside buyer.

The Court: Anything else?

The Witness: That is the nearest to my recollection."

662 Whereupon the hearing was continued to Friday, September 24, 1937 at 2:30 o'clock P. M.

HUGH W. CROXTON, a witness called on behalf of the Court Trustee, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Rosenstone.

The Witness: My name is Hugh W. Croxton. My business is real estate. My office is located at 4723 Broadway, Chicago, and has been at that address for the past five years. I have been in the real estate business in Chicago since 1901. I started in the real estate business with Henry A. Knott & Company. I specialized more or less in property management and real estate sales and appraisals and renting. I represent today various landlords or owners of property that I am renting their space for. I procure tenants for these properties. During the time I have been in business I suppose I have rented several hundred of them. I specialize in the renting of commercial store properties, hotel properties and apartment property. I operate mostly on the north side from the river to and including Evanston along the shore.

I represent some property owners now that have restaurants in their properties that I have procured tenants for. I have four restaurant tenants at the present time. They are in the uptown district, around the vicinity of Wilson Avenue and Broadway.

I am familiar with the Granada Hotel on Arlington Place. I have known that particular property since it was promoted and have been in it more than once. I was there today. I am acquainted with the renting conditions in the vicinity of the Granada property. I have rented prop-

663 erties in that vicinity for clients of mine.

Thereupon Mr. Rosenstone showed the witness Trustee's Exhibit C.

The Witness: It looks like a fairly accurate picture of the ground floor of the Granada Building. The writing room is smaller in area than the solarium, I would estimate. I know what the dimensions of the solarium are only from measurements that I made this morning, when I was up there at the property. The measurements of the solarium were about 16.6 wide by 26.3 long. I made measurements of the adjoining room that is designated there "writing room". I made that measurement this morning also. I found that measurement to be approximately 19 feet wide by 26.3 feet long.

Mr. Rosenstone then showed the witness Court Trustee's Exhibit C-1 and called attention to the picture of the "ball room."

The Witness: I con[illegible] it a fairly accurate picture of the interior of that room.

Turning to the picture of the lobby of Granada, the room is practically the same as the picture.

The ball room is approximately 30 x 63 feet.

I feel that I am familiar with the fair rental values of store rooms used for commercial purposes and for restaurant purposes in the vicinity of the Granada Hotel, Chicago, Illinois. Referring to the room called "solarium" or designated "solarium" on that map, it could be used for commercial purposes such as an apparel shop, antique shop and millinery shop. In order to use that room for any of those purposes it would not be necessary to make any structural change in the building. There is an entrance in the lobby into that room at the present time, which would serve that room all right for commercial purposes. It would
664 probably have to be partitioned off by folding doors.

I believe that adjoining room designated "writing room" could be used for commercial purposes. It could be put to the same purpose. That room at the present time has only an entrance through the solarium.

"Mr. Rosenstone: Could an entrance be made from the hotel lobby into that room without any difficulty?

The Witness: It would require some—

Mr. O'Brien: Just a minute. If the Court please, I do not want to keep objecting, but I do want to get two objections; first, that it does not appear that this witness is qualified; second, while I have no objection to the general information for the Court, I do object to any line of testimony which involves structural changes of that building.

Mr. Rosenstone: Well, I asked—

The Court: Well, looking at this plan, it would not seem

there would be very much change to get into that writing room. I would consider myself competent to answer that question, if I went up there to look at it; most any man that has had the experience of a lawyer, real estate man, business man, I think he could answer that question; nothing difficult about it. Let him answer it."

The Witness: From the lobby entrance there is another entrance 20 x 22 practically here just inside of what is designated as a lobby. An entrance could be arranged through there into the writing room. Now there is only one entrance through the solarium. There is also one to the corridor now but they have it closed off with an iron grilled gate which could be opened. It would afford entrance from that point as well as from the lobby direct.

665 "Mr. Rosenstone: What, in your opinion, is a fair rentable value, as of today of the space designated 'solarium.'

Mr. O'Brien: That is objected to, your Honor, on the ground that the witness is not qualified.

The Court: Oh, I think he is qualified. Overruled.

The Witness: $50 a month.

Mr. Rosenstone: And what, in your opinion, is the fair rentable value of the space marked 'writing room' as of today?

The Witness: $30 a month.

Mr. O'Brien: The same objection, your Honor.

The Court: Overruled."

The Witness: There is an entrance lobby to the ball room. There is one large entrance and one smaller. There is an entrance from the large ball room into the dressing room. The space in the rear of the ball room marked "service room" is a fairly good sized room. They call it a serving kitchen. It is used for serving meals at the present time or to any club affairs and ball room affairs. In connection with the possible renting of that room for a restaurant, it could be used for the kitchen and in connection with the running of a restaurant the manager's office in the rear of that could be used for the refrigeration plant.

"Mr. Rosenstone: If that service room and the manager's office were turned over to that use would there still be sufficient space for the management and employees who are now running or operating the hotel?

Mr. O'Brien: Just a minute, please. I don't want to interrupt, your Honor. May it be understood that my same objection goes to all these questions, calling for the

witnesses' conclusion, and on the ground that he has not been shown to be qualified.

The Court: Yes, overruled."

666 The Witness: If that service room and the manager's office were turned over to that use there would still be sufficient space for the management and employees who are now running or operating the hotel. They could be accommodated very easily by dividing the office, which is rather a wide room, and the offices could be put in there. The manager has a very large attractive office at the present time. That could be left as it is.

I have remodeled a great many buildings and have had experience over a considerable length of time mostly in rooming houses and in small hotels.

The ball room space, in my opinion, can be rented for a tea room very nicely. In my opinion $200 a month is the fair rentable value of the ball room, together with the service room and the manager's office, if that were needed for a tea room as of this date today.

I have been active in renting properties during 1934, 1935, 1936, and 1937, and have kept in touch with changes in rental conditions throughout the City of Chicago during that time. I am a member of the Chicago Real Estate Board. In comparing the rental values today with the rental values in 1936, I would say that they are approximately the same. The renting conditions in Chicago are much better today than they were in the year 1935, practically 20% better. With respect to 1934, I would say that they were 25% or 30% better.

I said for the solarium $50 in the year 1937. For 1935 it would be 20% less, $40 a month. For 1934 about 30% less, or $35. I would say that the writing room would be worth $30 a month today and the same deduction in rates would apply as to the other.

667 As to the ball room and adjoining space, I would say that was worth $200. I think there would be a great reduction on that for preceding years. I think it would be worth the same in 1936. In 1935 it would be 30% less, or $140. In 1934 about 50%, or $100.

Cross-Examination by Mr. O'Brien.

The name of my Company is H. W. Croxton & Company. I have been at this address on Broadway about five years. Before that I was at 1027 Leland Avenue. I am a principal in that company.

The general nature of my business is property management, real estate sales and appraisals. I am managing some properties now. They are not in the same general neighborhood, that is 4723 Broadway, they extend at the present from about 1600 north to about 7500 north. I am managing all of these for owners. I am not managing any of them at the present time for court receivers or trustees. I am managing at the present time apartment buildings and commercial buildings. I mean stores, lofts and garages. By apartment buildings I mean flat buildings, walk ups. That describes every type of property which I am now managing. Prior to the present time I was running some properties as court receiver. They were likewise apartment buildings and commercial buildings; also walk-ups. I have managed some with elevators but not as receiver or trustee. I managed a building with an elevator in it at 628 and 630 Sheridan Road which was a five story apartment building containing six room apartments, unfurnished. That is the only one I have managed with an elevator.

668 I have rented space for restaurants. That space was in commercial properties, all except one. The exception was the Iron Lantern in the building at the southeast corner of Wabash and Ontario. The building is a residence remodeled into studio apartments and on the ground floor we had the Iron Lantern Tea Room. That was four stories walk-up. Rented out to commercial artists and others. They were kitchenette apartments rented to students and the like. We provided small stoves and small iron boxes for cooking. It was an old residence remodeled.

At the present time I am not managing any property within a radius of a half mile of the Granada.

As to ever being in the contracting business, I contracted apartment buildings, three story English basement, walk-up type.

I do not know directly anything about the costs of food.

In speaking of those monthly rentals, I did not have in mind that the tenant would furnish its own light, water, electric power and other items of that type. The tenants would have a separate meter for their electric light. The tenant would pay for electric power on a separate meter.

Assuming that the patron of the shops or this tea room had to first enter into the hotel lobby and that would be the only entrance to and exit from the shop or tea room, I would still value the rental at the same amounts. I think the ball room space would furnish adequate space for a tea room to take care of any reasonable expectations of patron-

age in that building. It is my thought in the operation of this tea room that the patrons would be made up not
669 only of the residents of the hotel but people of the surrounding neighborhood or vicinity.

I observed this morning the floor levels throughout the lobby and solarium, writing room and the ball room. The materials that they are made of are terrazo mosaic. I am not very certain of that. They are not all of a common level. The ball room is on the same level as what I call the entrance lobby, practically the straight sidewalk level. The solarium and the writing room are on a level with the lobby floor. The writing room is on the same level as the inside looby. There is an entrance to the writing room from what I call the inside lobby from the stairs to the north.

In arriving at the rental value of $200 per month for the tea room and the ball room space, I considered that there is a possibility of having a very excellent trade from the building and the surrounding neighborhood, and when a tea room once gains a reputation people from far and wide will go there. In addition to that there are opportunities to rent that ball room for social occasions and for balls in the evening. I mean even if there were a tea room in it. I haven't any idea how many guests there are in the hotel. There are a great many other hotels within a radius of half a mile or so. I judge there are 14 to 16 apartment hotels on Fullerton Avenue within four blocks. I would assume the largest percentage of the people living at the Granada are employed outside during the day. I haven't had a great deal of time to check to see if any other restaurants were in the immediate vicinity of the Granada. I was called up on the telephone at ten o'clock this morning. I checked in a casual way as I drove down this morning. I know that some of these other fourteen hotels have dining rooms. I have checked this morning to see if they were still in operation.

670 I found a dining room in the Patrician Annex, 411 Fullerton Parkway. I know to my knowledge that has been there two years. I understand they are paying better than $75. It is a very small dining room. I don't know how many people there are in that hotel. It is an apartment hotel.

The Surf Hotel at Surf and Pine Grove has a dining room. I judge that it is just about a half mile north of the Granada. It is a very large hotel. It would be comparable to the large hotels on the near north side.

The Lincoln Park Arms has a dining room. It is on Pine

Grove on the west side of the street south of Diversey. I believe it is about a sixteen story building. It is not a large hotel. It is a very narrow one. I don't know how many guests or tenants it has. I haven't had a chance to check. I went past there this morning. I noticed the sign was still there "Coffee Shop—entrance through lobby," and the space in front is used as a commissary or grocery store. As to the Surf, the Lincoln Park Arms and the Patrician Annex, I could not see the restaurant from the street in the Lincoln Park Arms, and the Patrician Annex is very obscure. You have to enter through the lobby. There is no entrance to the street.

As to the Surf, you enter practically from the street, you enter into a hall that opens right into the restaurant; there is a sign there showing that there is a restaurant.

As to the Lincoln Park Arms, there is a sign on the outside of the building.

As to the way I arrived at $200 a month as being a fair rental value for tea room purposes of the ball room space, I would say it is my opinion of value.

671 I believe I can secure a tenant who would be willing to pay that. I formed my opinion just by comparing rents that restaurants pay. As to my having any knowledge of the amount of help that anybody operating that space for a tea room would have to employ, I have not had the time to compute all those details. It is my opinion that I could get that rent.

Redirect Examination by Mr. Rosenstone.

The Witness: In stating my opinion as to values, I took into consideration that it would include the heat. The radiators are already in the room. There is a stage or platform at the south end of the ball room. I believe it is advisable to leave it in on account of club affairs that could be accommodated in that space.

Witness excused.

"Mr. O'Brien: If the Court please, I wish to renew the motion—my motion in relation to the testimony of this matter and I move that his testimony be stricken on the ground that he is not qualified; also the showing on the basis for his determination of the rental value is wholly inadequate and insufficient.

The Court: Motion denied."

A. S. KIRKEBY, called as a witness on behalf of the City National Bank and Trust Company of Chicago, having been first duly sworn, was examined and testified as follows:

672 *Direct Examination by Mr. O'Brien.*

My name is A. S. Kirkeby. I live in Chicago at the Drake Hotel. I am presently operating hotel properties, being the Drake, Blackstone, and the Sheridan Beach here in Chicago, and the Evanshire in Evanston, and the Town House in Los Angeles. I have operated hotels at least during the last five years. Prior to a year ago I operated a group of approximately twenty hotels, being apartment hotels and small residential hotels here in Chicago. I include in the term "operation" the actual running of the properties, supervision principally.

I am somewhat familiar with the Granada Hotel at 525 Arlington Place, Chicago. I made a short examination of it last Friday for the purpose of this hearing.

Mr. O'Brien then showed the witness exhibit marked Trustee's Exhibit C.

The Witness: This document substantially reflects the layout of the ground floor of that hotel. Without reference to the exhibit, the ball room is immediately to the right as you enter the front door; the solarium is a little further on to the right; the writing room is on the same side as the solarium.

In my opinion, the renting of the ball room space for use as a tea room or dining room would not be a profitable operation in that neighborhood. The building is west of Clark street, which definitely stamps it as a cheaper neighborhood than that district east of Clark Street. In making a survey of the Immediate district west of Clark Street, and I confined my survey to the west on the theory that very few people east of Clark Street would patronize such a restaurant, I found that most of the improvements within two blocks of this property consisted of

673 old two and three story walk-up apartment buildings.

I did notice one seven story apartment hotel in the neighborhood. That was the highest building I saw there. I don't believe that neighborhood would support a restaurant in that particular location. The floor plans of the Granada Hotel show 114 units. From that it could hardly be hoped to get a sufficient volume of business out of the building to support a restaurant or a tea room.

I am quite familiar with the cost of food and the cost of restaurant or tearoom equipment and the cost of labor. Assuming that a restaurant or tea room were maintained in that space, and assuming that the majority of the people are working people, the business would be confined largely to breakfast and supper. With the number of kitchenettes in the building, it is not logical to assume that there would be very much breakfast business.

In a general way, as to the kind of a menu which I think might be maintained in a tea room situated there, I would say for supper prise possibly from 50c to 75c and for breakfast from 35c to 45c. It has been my experience that, exclusive of carrying of the equipment investment, a tea room would have to take in a minimum of $100 a day before it began to make a profit. I mean that to cover actual operating expenses and cost of food, I include in operating expenses the cooks, waiters or waitresses and the manager's salary. In a restaurant of that kind one of those could always act as cashier. As I figured it, the pay roll is a part of the operating charge. The cost of raw food on popular priced meals in that price range would probably run about 50% of the total selling 674 price. I would also include in operation the electricity used for power and for lighting. That would be an operating expense. There would also be cleaning, wear and tear and breakage of glassware and dishes, loss of silverware, laundry of linens and replacements of linens. I would include all those things in the term "operating charges." In this place you would have to take in $100 a day before you have enough to meet those charges. I would not include rent.

Cooking ranges, refrigerators and coffee urns would be required to operate a tea room such as would be in here. Tables and chairs would also, of course, be a necessity. You will have to have table cloths, napkins, linens, chinaware pots and pans, kitchen utensils, cutlery, and that sort of thing. I would say that it would cost a minimum of $5000 to provide that equipment and those furnishings; that would not supply any very elaborate equipment but that would equip it in the cheapest manner I could think of.

I would presume that after operating charges, as I have enumerated them, I would have to earn enough money to pay my rent and to amortize the cost of that equipment.

I am told that all of these apartments in the Granada are either dinette or pullmanette apartments. I was also told

that the hotel caters chiefly to resident tenants as against transients. In a hotel like the Drake Hotel it is chiefly transient. The same is true of the Blackstone and of all loop hotels. In the larger hotels, I consider it an essential part of the service to provide dining room facilities and service on account of the large transient business and for the convenience of the guests. All of the hotels with which I have to do are all showing very heavy losses in the dining rooms. I don't know of any of the large
675 hotels that lease the dining room space.

I am leasing the dining room portion in two hotels which I am operating, both residential hotels on the north side, the Sheridan Beach and the Evanshire. The size and the type of the accommodations in those hotels is very similar to the Granada. I would say that the location of the Sheridan Beach on Sheridan Road and the lake, and the location of the Evanshire at Main and Hinman streets, in Evanston, is far superior as a business location to the district west of Clark street where the Granada is located. I did not see a single place of business around the Granada. You must go further north on Clark Street to Diversey before you hit the business section. As to the two apartment hotels whose dining room space I have leased out, I originally ran a dining room there myself at a substantial loss, so I leased them out on a percentage basis. I got from $40 to $60 a month rental out of them on a percentage lease, which does not begin to pay for the wear and tear on the equipment I furnish. In the case of the Sheridan Beach we furnished $15,000 worth of kitchen equipment, dishes, silverware and utensils. In the other hotel in Evanston our investment in the equipment runs about $10,000. When I took those hotels over they already had dining room space laid out. I would not have constructed the dining rooms. The space was there and equipped for that purpose. They were so constructed fifteen or sixteen years ago when the buildings were put up.

As to my having any way of estimating how much money per day a tea room in this space in the Granada might take in, I would say it would be very difficult to make an estimate of that kind with any degree of accuracy on
676 account of the fact that the amount of business you did would be considerably dependent upon the type of food they served and the service, but in no way can I conceive of a tea room in that particular location doing $100 a day; that is more than we are doing at the Sheridan Beach and the Evanshire put together.

Aside from any legal restrictions or ordinances, and just considering the prospect of making a success of them as a business, I do not believe it would be feasible to make any of this lobby space for use into shops. I cannot even conceive of shops with a street entrance there making a go of it on account of the character of that neighborhood. As to the suggestion, for example, that there might be an apparel shop, I don't believe it could be operated profitably. As to a millinery shop, I don't believe any type of shop in that location could make a go of it. I would say the same thing as to an antique shop. Assuming that an antique shop was installed or set up there paying $25 or $30 a month or $40 a month, I couldn't see what kind of antiques they could afford to stock at present with because I could not conceive of any one going in there with that type of business. I would say that it is not likely that a tenant going into that particular location would be the type that would carry a stock of substantial merchandise. If a millinery shop, for example, were conducted there without a stock of substantial merchandise I would not say that it would do your general hotel situation any good.

I am operating and have leased out a lot of space for shops in the Drake, some of them are in the inside facing interior corridors with concourses. Those with a
677 street location in general are profitable; those on the inside corridors are not. The difference in the rental that they bring is about ten for one. Our rent on the street side is about ten times what the rental is on the inside corridors immediately joining.

Assuming that any possible tea room or dining room conducted on these premises would have no entrance or exit from or to the street direct, it would change my opinion as to the feasibility of renting this space. It would be a serious detriment on account of the loss of a lot of outside business that might possibly come in through a direct street entrance,—people who don't care to walk into a hotel lobby to get into a dining room. That assumes that you have some people going by. I express it as a business location, where a great number of the public are passing back and forth. My conclusions are reached with reference to the profitable operation by a tenant himself on the assumption that any arrangement of that kind to be permanent would have to show the tenant a profit.

Assuming I was operating the Granada as it is now, I would not attempt to utilize or rent out any of this space

for purposes of a tea room, the reasons being principally on account of the location. It is not in a business neighborhood. The hotel itself has no need for a tea room or dining room with the number of kitchenettes they have there. I cannot see that shops or a tea room in my opinion would in any way improve the appearance of this lobby. I don't say that they would detract from it, it would depend on the character in which they were set up and furnished, of course. The character of a tea room equipped with $5000 worth of equipment would be pretty cheap.

678 *Cross-Examination by Mr. Rosenstone.*

The Witness: The Company that is operating the Drake Hotel and the Blackstone Hotel is a corporation. I am president and managing director. I am operating the property under lease with an option to buy it, that is right. I am a lessee of the Drake Hotel. The situation is the same as to the Blackstone. I took over the management of the Drake on January 1 of this year, and the Blackstone on April 1st of this year.

Before that time I had been operating hotels in Chicago; for the previous three years, the Sheridan Beach Hotel located at 7301 Sheridan Road; for the previous two years the Evanshire Hotel located at Main and Hinman Streets in Evanston, and I have been in hotel operation for the past ten years but only about four years in Chicago.

Since I have been in Chicago, I have been living at the Edgewater Beach Apartments for the last three years and at the Drake Hotel since the first of January of this year.

I have been in the real estate business in Chicago. I am not a licensed real estate broker nor a member of the Real Estate Board. I was an officer of the Apartment Selection Bureau during the years 1933, 1934 and 1935, which was engaged in that line of business. My connection with it was principally in the financing of leases of hotels. I also represented the landlord in those cases. My negotiations were more on management contracts than actual leases; most of these leases had management contracts. I have never been in the business of leasing property of any
679 kind in Chicago except what leases I made on my own behalf or my own company.

I stated that I am renting the dining room or the tea room in the Evanshire and the Sheridan Beach on a percentage basis. I believe the percentage is 5% of the gross sales on both leases. That is on gross receipts. There is

no prevailing rental rate for leases of that character in Chicago and the vicinity of Chicago because that would be determined by the neighborhood and the volume of business and the type of restaurant, and whether or not they were permitted to serve liquor.

(Whereupon an adjournment was taken until ten o'clock A. M. of the following day, September 25, 1937.)

Met pursuant to adjournment September 25, 1937 at ten o'clock A. M.

WILLIAM H. SCHOTT, a witness on behalf of the Court Trustee, having been heretofore duly sworn resumed the stand and further testified as follows:

Cross-Examination by Mr. O'Brien.

I have testified and I have prepared a report which is in evidence as Trustee's Exhibit R. Prior to the preparation of that report I examined the plans of each of the three buildings. They were furnished to me at the Granada Hotel by Mr. Parker. The plans consisted, in a general way, of architect's blue prints and drawings from which the buildings were built originally. I used them to take off the cubic contents of the buildings.

I did not see the mechanical drawing of the building. I went to the contractors on that to get my information.

680 In addition to examining the drawings to take off the cube, I also made an inspection of each of the three buildings to arrive at the condition.

I made an inspection of the Arlington from the outside to get at the conditions there. I made an inspection on the inside. I saw the tunnel situation. I went to the Arlington to make this inspection prior to the time that I came to my conclusions. It was about the first of September.

I did not pay any attention to the occupancy. I did not see anybody, I just walked through. I mean I went on the inside to take and see the general character of the inside of the building, but from the standpoint of making certain determinations I worked on the outside entirely. I went through several of the floors, just down through the corridors. I went to the Lincoln Park Manor the same way. My inspection at the Lincoln Park Manor was no different from that at the Arlington. It was the same at the Granada with the exception of the boiler room inspection. In my

inspection of the buildings and equipment I did not pay any attention to the square foot radiation, I had a list of radiation furnished me.

Of my own knowledge, the amount of radiation in the Arlington is approximately 9200 feet. I had a schedule of it there. I paid no attention to what the square foot radiation figured except from one standpoint. I figured out the requirement of the building. If the building is properly set that gives you one factor, and if it is underset, then it will cost 22% more to heat on a 75% basis than on a 100% basis. I mean by set or underset, for instance, if the building required 1000 feet of radiation and they only had from 600 to 700 feet of radiation set it would cost 22%
more to heat that building than if it had the full re-
681 quirements. I go by cubic contents and work from there down.

I have forgotten now who the architect was that made those drawings; I did not pay much attention to that. I did not notice that at the time because they were furnished to me. I would not say whether it was Olsen & Urbain or not. I paid no attention because the drawings given me were certified as the drawings the building was built on and that was the controlling fact with me. I can get a pretty fair idea of the construction content of the building by inspecting proper architect's drawings.

Assuming several different buildings having the same aggregate cubic content but built in different styles as say the first one a perfectly rectangular building and another one built on the type of the Field Building here with a tower and some on the type of the Edgewater Beach, let us say, in my opinion, for the purposes of radiation and cost of providing heat the amount is not consistent in each one of the types and there is a big variation.

I did not see the figures furnished by Mr. Lewis until after I made my conclusion and it was put in shape and then I got hold of the Lewis report. The Lewis report made mention of a number of square feet of radiation in the Arlington. He gave the list of the radiation in the various buildings. I did not attempt anything except I used some figures on the value of the property. From what my own conclusions were based on, in my judgment, Mr. Lewis arrived at substantially a correct figure for the amount of square feet of radiation figuring from his standpoint, there is a difference in engineer's operations. I used Mr. Lewis' report for data as to the cost of the heating and

refrigerating equipment on the premises for the rea-
682 son that his figures were so close to mine. I adopted them because they were substantially correct.

My figures were based in arriving at the cost of the equipment on the refrigeration on the basis of what the contractors charged for building the plant originally, plus the usual overhead items covering all the costs. The same is true for the heating plant and the power installation.

683 In the Arlington property there are 48 Pullman units and 29 Kitchenette units. As I remember, there are 70 odd rooms, but I did not go by rooms in making this data.

In the Granada there are 45 Pullman units and 51 Kitchenette units. As I remember it, there are about 109 rooms. I think that the Granada had more rooms per unit than the Arlington.

In addition to what I have just testified to, I was not given Trustee's Exhibit "Q" by Mr. Tilney before I started. That was given to me after I had written my report. I did not see that until after I had written my report because I called for it for comparison and it was not furnished until after I had written my report. I went to the office and Mr. Tilney furnished me data on operating cost items as I called for them. I have my consolidated work sheets with me. I did not obtain data from any one else except Mr. Tilney. I asked for and procured pay-roll, electric bills, oil, and water bills for maintenance and miscellaneous items. These different classes include all of the several data which I have made. The entire operation is in the Granada and I determined the operating costs of that plant. The bills for electric power and light were not the bills for the service in all three buildings. The power all comes through the Granada. The light of the Arlington and the Lincoln Park Manor are independent. The power bills, however, for all three properties were billed to the Granada. These bills likewise included all of the Granada charges for power and light outside of heating and refrigerating plant. The bills were split into three sections. The halls of the Granada are metered independently. The general house lighting is on a meter of its own. The power

is billed as a unit and had to be subdivided by depart-
684 ments. The water bills come to the Granada and cover water for all three buildings. The same is true of the oil bills.

From Exhibit "R" that I figured, I said:

"Appraisals made heretofore on the cost of the installation are accepted and used by me in providing for interest at 5% cost, 15 years amortization as 4.3%, maintenance and supplies at 5.7%; total 15%."

That is exactly the same basis that was used by Mr. Lewis in his report.

It is usual in an operation to set up reserves for the miscellaneous items. The statement includes all of the maintenance and supplies in the boiler room, and in the net part of that investment would be the amounts that will sustain the property from the standpoint of operation over its life.

It is not my understanding that the Granada maintained the pipe lines of the Arlington. The Arlington maintained their own pipe lines, within that 15% are the maintenance charges whatever they are from now on.

Mr. O'Brien then stated to the witness that on the first page of the report he states that heating costs are divided on a basis of square feet of radiation required to heat each building.

The Witness: There are no figures in the report showing the square feet of radiation required to heat each building.

I did not know how many people were occupying the Granada at the time I made or procured this data, but the building was occupied completely with the exception 685 of one apartment. As to the Arlington and Lincoln Park Manor, I did not have any record as to the occupancy. I say in the report that the hot and cold water is proportioned by the number of apartments. It would make a difference in the ultimate figures how many people were occupying units as to the consumption of hot and cold water. In the case of apartment residence, ordinarily we figure 30 gallons per person per day.

The heating and refrigerating plant was installed in the Granada in 1924. I don't know what month. The report states that the aggregate cost of the plant was $44,410.00.

My report made this month is intended to reflect and indicate the proper charge for service to the two other properties during the years 1935 and 1936. In the year 1935 the plant was 11 years old. The 15% item covers the depreciation reserve and I am establishing the facts as near as I can get at them for rates from now on. I did not depreciate the plants from 1924 to 1935.

The refrigeration plant in the Granada is a compressor

type with Brine circulation. It was made by Brunswick-Kroeschell. It was a standard type of refrigeration plant at the time it was put in. Today you would put in direct connected units instead of belted units. That is about the only difference. The compressor design would be about the same. It is customary to write off a refrigeration plant in 15 years. You would have a greater depreciation in the circulating system with brine than you would have with ammonia. There is brine in the Granada. I did not pay any attention to the brine pipes in the apartment themselves. I confined that to the plant itself.

686 I am not able to tell the court the actual physical condition of those pipes. I noticed how the brine pipes were hooked up with the boxes. The coils were set in the box in the usual form. The brine comes from the central plant circulated by circulating pump. I did not pay any attention to how it is connected with the box. They were standard connections carrying the brine to and from every coil. The brine is piped into the apartment through circulating pipes. I didn't pay any attention to how the pipes entered into the apartment because I was making a determination of that at the power plant and the system had to absorb everything.

The refrigerating plant which was actually installed would not be adequate in capacity and design to furnish service to more buildings than those it is presently servicing. The boiler plant would furnish more by design and installation. The boiler plant could carry a 50% increase.

I do not know whether or not Mr. Mateer at the time of the erection of these three buildings had in mind the erection of two others. I was simply considering the three buildings.

On page 2 of the report I say that the boiler room equipment occupies 7900 square feet, or 86,000 cubic feet of space, which costs 70 cents per foot, or $60,200.00. By "space" I mean space in the basement. The basement space is divided up; the cold water tanks and the pumps on the heating system are in one room, the hot water tanks and the circulating pumps are in another room, and the boiler room is another room. There are partitions in

687 the basement. There is one between the meter room and the boiler room. The boiler plant proper is occupying three different rooms. In the other end of the building there are other rooms, but I did not pay any attention to them. I only took the space actually occupied by

the plant. It is an ordinary basement used in an apartment hotel building.

As to the cost per cubic feet of construction of the upper space through the apartment rooms, I figure 70 cents a cubic foot per room through the whole building would be a fair price, and use the same figure for the boiler. The other building construction would be a good deal higher on that foundation, because the foundation and all that is carrying the building and it is only fair to take and charge to this department the average of the building. I am speaking now of the space which the plant occupies. I did not take into consideration in arriving at this figure the cost of the foundation walls. I took the average of the building. In my judgment the average cost of construction was aout 70 cents per cubic foot, back in 1924, for a building of this type.

After depreciaing that $60,000 odd, down to $45,472, I point out a potential interest there of 5%, amounting to $2,287.60. It is my judgment that that is an item which should be considered in fixing the ultimate charge. As to whether or not that basement space is rentable space, as a general proposition, it may or may not be used. It could be converted to a lot of things if you found somebody that wanted to use it. It is usually built for the purposes it is now being used for. I cannot think of any tenant who might want to rent it.

688 I have not set down in my report the cubic content of the different buildings.

I would not say as a matter of fact since 1935 that this refrigeration plant was obsolete and I do not think it will be obsolete for a good many years, for a plant of that kind with ordinary maintenance could be kept going for a good many years. If I owned the Arlington property, taking it on the cost basis, I would prefer to operate the unit system rather than the brine system. I think the investment would be less as to the unit system and the operating expense would be less. I think the same is true with respect to the Granada and the Manor. I would say that it would probably be around 25% less.

At page 4 of the report I say that the total cost of refrigeration as to all three properties is $10,963.14, including therein 20% profit. I would say off-hand that to buy new electric boxes, individual units of the General Electric type, of the dimensions, three and four feet boxes, taking in the cost of the boxes, wiring, and everything, the cost would be probably $125 a unit. You might buy the

boxes for $80 a box, but you have the wiring to take into consideration.

An individual unit per box could be operated for around $2.50 per month average, by that I mean, the electricity; for actual operation, probably $1.75, including maintenance and everything.

On page 4 I said that the annual charge to the Arlington for refrigeration alone is $3,998.29. I would say that the cost of providing new individual boxes, including all operating charges, could be met within three years by the savings. I would say it would take about 60% of the
689 above figure to operate the boxes, if you maintain the same size boxes you have been operating. You may have 5 feet and 8½ foot boxes. If you get into the smaller size you would reduce the cost materially. You have 76 boxes in the Arlington which would cost $7,500 for new boxes.

"Mr. O'Brien: And assuming that it cost you a dollar per month per box for power, do you think you could buy those boxes and have them paid for, including your operating, for three times the annual charge to the Arlington, as shown by the report?

"The Witness: You have this difference: you would not get the power rate over there you are getting here. This power rate is very peculiar; it would cost you pretty near twice as much for power."

The Witness: I won't figure less than $2 a month to operate your boxes, under this conditions. Assuming that it was $1 a month, that would be $12 a year per box, but you cannot operate for one dollar. If you assume that it was a dollar, you have 76 boxes, which would be only $912 a year.

Speaking of the size of the box, as a matter of fact these new boxes are much more efficient in performance than the old brine box. They are a good deal sightlier, and I would say more desirable for the tenants. As to whether or not ice cubes are made a lot faster than the other way, I would say that is only a question of temperature. I don't think it makes much difference in the time. The freezing time would be about the same if you carried the same circulating temperatures. In a brine box it takes two or three hours to make ice cubes. In an electric box I
690 would say it is purely a question of temperature. The control of temperature in the brine box is from the plant. The tenant can set it higher or lower.

I looked at the coils in the brine boxes. You have the

same circulating temperature in your system. It is continuous all the time. I have pulled out lots of ice trays but not in this building.

If you put individual boxes in, you would save the maintenance of the circulating system as, of course, you would not have the burden on the central plant. The boxes in the Arlington and in the Manor belong to those buildings. They do not belong to the Granada.

I think it is reasonable for a building to have a rate of 20% on its investment. You have a hazard of maintaining a service and you never know what is going to happen and they are entitled to something for the service of rendering the service to the other consumer. A contractor engaged in public work encounters and experiences much bigger hazards, but when the job is through it is through. This is continuous. I didn't go by the rate of profit on a contract for the building of one of the PWA works. It may be standard with those people but it isn't standard. I have been a contractor all my life. As to the furnishing of service by public utilities I think a fair rate of 20% was the minimum. Take the original contract for the furnishing of power to the railways here. It was founded on an operating cost after the max demand charge at an operating profit of 20%. I think that is still true today. The
691 heating plant itself is more or less fool-proof, but you are entitled to consideration for services, and all that. This Brunswick-Kroeschell plant is a pretty good plant. It took a very nominal amount of maintenance for either of the plants for the last two years, which I took.

As far as the Granada is concerned its entire hazard lies in the central plant, with the piping distributing systems of the Arlington and the Lincoln Park Manor. If anything happened to them it would be their hazard and not the Granada, but the Granada has to take care of its compressor and its piping used in that system and its various devices for operation.

Mr. O'Brien: "Well, let me ask you this. I want to find out where these two different situations would make any difference in your conclusions.

"Supposing that the Granada and the Arlington and the Manor, prior to this installation of the plant at the Granada, entered into an agreement subject to nothing—I mean subject to no prior claims—that the Granada would build this plant and that the Arlington and Manor would, as long as they maintained the heating and refrigerating plant, buy this service from the Granada. Assume that situation.

"Now assume this one: That the Granada put in this plant without such agreement and then went out and sold the service to the other two buildings.

"In your judgment, would the price to be paid for the service be any different in those two cases?

692 The Witness: "Yes, they would be. If it is founded upon a contract so that they would know they would have an income from the use of that plant, it would be lower than if they built a plant and had to go out and get the load afterwards,—because you would have to allow for a partial loan instead of a full load. You have a fixed operating amount regardless of load."

Mr. O'Brien: "Which would be lower?"

The Witness: "The lower would be where the contract was made fixed to operate."

Mr. O'Brien: "What would be lower?"

The Witness: "The one you are operating now."

Mr. O'Brien: "No, I mean what is it that would be lower?"

The Witness: "You would have a fixed condition, then, to guarantee your operation, and in the charges made to the consumer it would be lower than if they came in after a plant was built, where they become one of a general list of consumers.

"For instance, if I have a situation here of a dozen buildings that I am going to heat, or whatever may be, that is a fixed load and it is going to be founded on operation over a period of years to absorb all of these items. That would fix a lower rate than where I have to operate and carry the burden—"

Mr. O'Brien: "Sure, I understand all that. But do you think you would stand as good a chance of getting the other two buildings to carry your original investment when you put in the plant without any agreement?"

The Witness: "You absolutely have to."

Mr. O'Brien: "Well, do you think you could?"

693 The Witness: "You do get it. In the first place, you wouldn't build a plant depending on two buildings, built right alongside of you, without an agreement, because you have to start in with the idea that you are not going to get them. Take and build any plant in any section of the country and start in. You have to assume that you haven't a customer and you have to go out and get them. It is going to take a period of years to get that load. You have to carry your property, and everything else the same, and in building your loads the cost

will be materially higher than where it is on a fixed proposition."

Mr. O'Brien: "You would if you want to make an earning and get your cost back?"

The Witness: "Absolutely."

Mr. O'Brien: "But how about the other fellow who doesn't have to buy from you when you have a plant that is adequate to service it?"

The Witness: "If the plant is established for its own use, and has surplus capacity—"

Mr. O'Brien: "Couldn't you minimize your operating cost by selling service?"

The Witness: "You could to this extent, just as the figures show. All that was taken into consideration here was actual operating conditions and costs. Then added to that is a 20 percent profit on the operating item itself, and added to it the 15 percent to cover the proportion of the investment which these buildings were using."

694 Mr. O'Brien: "Yes, that is right. In making up your report you charged the other buildings with the proportion of the investment, just as though they had an agreement in the first instance."

The Witness: "Absolutely, and that investment would be much lower than if they had their own plant."

The Witness: On page 3 of the report the item under refrigeration expense of $600.00, miscellaneous repairs, and on page 4 under the heading "Heating Expense", the item of $600.00 for miscellaneous repairs, and on page 5 under "Water House Service Expense", the item of $100 for miscellaneous repairs, are over and above the maintenance which you first mentioned which was included in the 15%. Those are items that happened in 1935 and 1936 and it was a matter of expense chargeable against those years. That is what was actually spent for maintenance those years without any reserve and was included in the 15%.

On page 3 of the report, the first charge under refrigeration expense is water, $1,431.40, which is for the refrigeration of all three buildings. In 1935 the actual water bill was $1,992.31, and in 1936, $2,057.44. I mean all water used at the Granada, Arlington and Lincoln Park Manor for any purpose. I think that the water bill for those three buildings, exclusive of refrigeration, runs approximately $600.00 a year. If you will take from the Arlington 33.43% of 8,764,000 gallons and multiply it by 6.8 cents, it will give you what the water will be by

itself. As to whether or not you save money on the water bill when you have an electric unit, the figure doesn't apply on that. You are absorbing your share of the water expense due to the refrigeration plant.

695 This water bill here purely applies to the cold and hot water. I have allocated to refrigeration expense $1,430.00 for water, and there is only $595.35 to the three buildings for water only, and of that item you take the percentage I gave you. It doesn't matter what kind of ice system you have, you have to operate your condensors and the big volume of water is used by the condensors. You would eliminate the water so far as the ice box is concerned if you had an electric unit.

In 1935 the over-all bill on the Granada for light and power was $7,278.02, and in 1936 it was $7,356.82. It averages about $7,400 a year. In that $7,400 per year I charged $3,869.16 against the refrigeration expense and I charged $502.00 against the heating expense, making a total of about $7,300. The average house light bill for the two years was $2,292.54, and for the power elevator and laundry it was $251.24.

By house lighting I mean the lighting of the apartments.

I did not check the books of the Arlington to find out what the annual charge is for the light and power there because it didn't enter into the problem.

I think the unit price for the corresponding items at the Granada would be higher than the Arlington, due to the fact that you haven't got the load line to get the rate. In other words, the Granada has a rate founded upon a max demand charge of $2.00 per month; $24.00 per year for the max. It has a "c" rate. I have forgotten how much it has to use in order to get a "c" rate.

696 Assuming that the Arlington is getting the "c" rate, you have this difference. The rate would be bound to be lower for this reason—you have a maximum demand that gives you only 6,000 kilowatts per month on the 2.1 rate. The average is 1.6. The power gives you the load to pull the rate down. If all three buildings were furnishing their own heat and refrigeration, the light and power charge would be higher because you wouldn't get the load line to pull it down to the lower brackets. Assuming that they were all operating on the same rate and had other common characteristics, then they would have the same proportion to the amount of

current used. The Granada would use more current. It charged more all the way through. It is standing 50% of the power of all of their own lights. Assuming they were each operating their own services, the Granada would still have a larger light bill than the other hotels because it is bigger.

I think the charge of $251.24 is a proper charge to be made for the power furnished at the Granada for the operation of its own elevators and its laundry. It has only one elevator. I took and figured out the usual mileage in a building of that kind to establish the power rate. I took into consideration the vacuum cleaning system at the Granada, that comes off the house lighting system. Forgetting the refrigerating plant and the heating plant the only other uses for power at the Granada were simply its laundry and elevator.

The pumps are all on the power section. There are three pumps on the water, that is on the cold water, and there are two on the hot water, and there are three pumps on the vacuum lines. The pumps on the hot water 697 are three horse power. The pumps on the cold water to my recollection are ten. My recollection as to the vacuum lines, the pumps are five-horse. They are small motors, and there are ten on the circulating to the ice system.

In terms of money, the power necessary to run the passenger elevator at the Granada runs about $15 per month. I imagine the horse power on the motor on the passenger elevator is about 25 horse. I didn't check it because it is only a small elevator and not high speed. I did not check the horse power on the various pumps, but I think that the horse power given is correct. I know they are in most of them. On the pump on the cold water system, I have forgotten whether they are 10 or 15 horse, but they are operated with little and don't require much power.

These are all the sources of power that the Granada uses for its own purposes exclusively. Just the general system there.

The aggregate of the power allocable to refrigeration only is $3,869.16; the heating is $562.00; the water is $401.99; that totals $5,024.88 for the power and $2,292.54 for the light. My total of all charges to the Granada for light and power is $7,317.42. The two items $2,292.54 and one of $251.24, make up the Granada's light and power, making a total of $2,543.78.

The item at the last page of $2,292.54 for house lighting is the Granada's house lighting, the meter readings show that. There are two meters for lighting in the Granada, one for the halls, and the balance of it the general lighting of the house, and that goes to make up that item of $2,292.54. I got the meter readings from the bills.

The bills were in a lump sum covering everything,
698 covering of the current furnished to the building for lighting and power consumed by the Granada for its own use and for servicing the other buildings. They show which is power and which is house lighting and which is the halls. Had to calculate in some way, outside the building itself, the amount consumed by the Arlington for its power exclusively, and that was shown by the meter readings. The bill does not show the entire power consumed by the Granada. It gives you the sum total of the hall lighting, house lighting and power. The power is all consolidated in one bill; that is the only item that had to be segregated by departments. I had to break down the power bill. When I broke that down, I concluded that the amount of power consumed by the Granada solely for its own benefit, was $251.24, and on the breakdown, I allocated to refrigeration 77%, heating 10%, water 8%, elevator and laundry 5%, which applies to the item of $5,024.88.

I have forgotten what the horse power of the laundry motors is. I examined and arrived at the operating conditions of that plant and that was my guide in arriving at my conclusions when I got the total amount of expenses they had been put to.

On the cold water end, they have three pumps. One is not used except only a little. The pressure of the city takes care of it. You have the same on your brine circulation. When it comes to the laundry motors, they have only one which drives a shaft or something. The horse power of that does not amount to much. It is all included in the amount of power they consume. It is a matter of hours of operation of that plant. It is included in this report here. I specify that the electric ele-
699 vator and the laundry's total amount of power was 157,025 kilowatts, and with the rate it makes a total of $251.24. I checked that on the basis of hours of operation of whatever department it might be. The laundry only runs so many hours a week and the elevator during 24 hours will only operate so many car miles. I did that on some work sheets but I haven't got those with me.

I have only referred to the passenger elevators. There are two elevators but only one passenger.

So far as I know the Arlington has its own radiators, steam pipes and piping of all kinds. From my knowledge as an engineer in order to put in in the Arlington its own heating plant of standard type and adequate for its own purposes, I would say it would require 125 horse power plant, which ordinarily would be divided into two units. Without knowing anything about where you would locate that and what the stack condition is, I would say offhand it would probably cost $7,500 or $8,000 to put in a plant completed.

The costs today are a little higher than they have been within the last four years.

Redirect Examination by Mr. Rosenstone.

The Witness: I met Mr. Woods, the Trustee, some two or three weeks before this matter came out. It was before he talked with me about it. When he gave me his instructions to go ahead and make this survey he did not indicate to me in any way what figures he wanted from me.

700 *Recross Examination by Mr. O'Brien.*

I would say probably around six weeks ago, Mr. Woods first talked to me about the general situation but he did not get down to anything specific. I finished my report on September 10th. Prior to the making of the report I did not in any way indicate to Mr. Woods any estimate of the fair market of the service from the Granada to the Arlington because I didn't have anything to go by.

CLAUDE S. PARKER, recalled as a witness on behalf of the Board of Trustees, having been previously duly sworn, was further examined and testified as follows:

Direct Examination by Mr. Rosenstone.

The Witness: My name is Claude S. Parker. I testified here the other day.

Mr. Rosenstone then requested the Trustees' Exhibit O-3, O-4 and O-5, be marked for identification. Documents were accordingly marked.

The Witness: I testified that I made certain deposits at the City National Bank and Trust Company on or about the 17th or 18th of May, 1937.

Mr. Rosenstone then showed the witness the Trustees' Exhibit O-3 for identification, and asked the witness to state if that is the deposit slip covering the checks that he deposited at that bank.

701 The Witness: This deposit slip represents the cash receipts of the front office as of May 17th and evidently deposited the following day, the 18th of May.

Mr. Rosenstone then showed the witness Trustees' Exhibit O-5 for identification.

The Witness: That deposit slip is made out in my handwriting. It was made at the bank. It represents the $600 payable to the Granada by the Arlington for the service of heat, refrigeration, hot and cold water. I got that check on the 17th. I went to the bank with it the same day. I don't recall if any one from the bank called me about that check. I think, as near as I can remember, Mr. Hall suggested to take it right down. I gave the check to Hubbart to be countersigned. He told me to take it downstairs and deposit it right away. I made out the slips in pencil.

Mr. Rosenstone then showed the witness Trustees' Exhibit O-4 for identification.

The Witness: These checks represent the house fund used at the Granada Hotel for cashing checks and petty cash fund for the benefit of the guests. They were taken to the bank some time after 3 o'clock on the 18th. It was with reference to that deposit that somebody told me that if I didn't bring it down they were going to come out and get it.

Whereupon, the said documents marked TRUSTEES' EXHIBITS O-3, O-4 AND O-5 for identification, were offered and received in evidence.

Whereupon, an adjournment was taken until Monday, the 27th day of September, 1937 at the hour of 10:30 o'clock A. M.

702 Met pursuant to adjournment, September 27, 1937 at 10 o'clock A. M.

IRVING L. HERTZMAN, called as a witness, herein, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Brien.

The Witness: My name is Irving L. Hertzman. I was associated with Central Republic Trust Company in 1933. I am at present with the City National Bank and Trust Company primarily as appraiser and also as an engineer of special problems that come up before the property management organization.

I had occasion during the year 1933 to consider problems in respect of the amount to be paid by the Arlington to the Granada for heat, refrigeration, water and power.

Mr. O'Brien then requested the City National's Exhibits 2, 3 and 4, be marked for identification.

Mr. O'Brien then showed the witness, City National's Exhibit 3 for identification.

The Witness: I had that before me at the time I gave consideration to the matter. That is a report made August 14, 1929 by Mr. William R. Lewis to Cody Trust Company. I first considered this matter about the first of December or the latter part of November, 1933. At that time the Arlington was paying approximately $900 a month to the Granada for that service. It was partly as a result of my investigations that that charge was cut. For the purpose of this hearing I considered the same problem
703 and assembled any data which might be of use to the Court in determining that property.

Mr. O'Brien then showed the Witness City National's Exhibit 5 for identification.

The Witness: That is a compilation of the figures I took into consideration in arriving at a determination of the fair amount to be paid, a total from the audit figures, the pay-roll, electrical charges, the cost of fuel oil, water, the total mechanical repairs and maintenance, making a summation of the entire cost. I took into consideration the cost of the lighting bills for the Arlington Hotel and also deducted from the total cost of estimated electrical consumption, consumption for house use of the Granada, arriving at a total corrected cost of furnishing the mechanical heat, refrigeration and water to the Granada.

I then allocated the cost to the Arlington which should

be a fair direct cost to the Arlington for construction cost basis.

As to the items of cost, I have the audit figures and statements, which I deem to suffice. The audit figures were made by Barrow, Wade & Guthrie for the year 1932 and through the month of November, 1933.

In the recent examination, I have five months of 1932, all of 1933, 1934, 1935, 1936, and have taken the first four months of 1937.

For the years 1935 and 1936, I determined, and found the pay-roll charge to be $2,460 each, and the total electric light bills $7,510.83 for 1935, and $7,759.19 for 1936. As to fuel oil, $7,278.62 for 1935, and $7,356.82 for 1936.
704 As to water, $1,997.31 for 1935, and $2,057.44 for 1936.

As to mechanical repairs and maintenance $1,921.27 for 1935, and $212.00 for 1936. Those are the actual charges for those items appearing upon the books of the Granada. From vouchers which are recorded in the audit statements which are taken from the voucher costs, they are the actual charges in my estimate of what they should be. The electrical charge includes all electrical charges for the Granada, including its own light and power. The total charges for the year 1935 were $20,338.03 and for 1936, $19,845.45. I found for those years that the Arlington itself for its own light and power paid $2,399.60 for 1935, $2,427.77 for 1936. Those payments were made for electric light and power furnished direct to the Arlington by the Edison Company and billed to the Arlington. It was for the lighting of its apartments, corridors, lobbies, the operation of its own elevators and other mechanical equipment not connected with this Granada plant.

I have estimated the charges to the Granada for light and power consumed by it for its own purposes.

I went about estimating that by taking it on a comparative room basis. There are 128 rooms in the Arlington, 211 rooms in the Granada, and 81 rooms in the Lincoln Park Manor, giving a total of 420 rooms for the entire property, giving 30½ per cent of the total rooms to the Arlington, 50.3 per cent to the Granada and 19.2 per cent to the Lincoln Park Manor. I took the ratio of practi-
705 cally 5 to 3 for the ratio of the light of the Granada to the Arlington. I took the ratio of 5 to 3 due to the fact that the power consumption would be practically in the ratio of your total number of rooms and the number of rooms run about 5 to 3.

I applied that ratio to the total light and power bills of the Granada and found the cost to the Granada to be approximately $3,800 for the year 1935, and $4,000 for the year 1936. That relates to light and power used by the Granada for the Granada's own purposes exclusively.

The Granada uses power for its own purposes exclusively for two elevators, one passenger and one freight. The passenger elevator having a 20 horse power motor and the freight a 7½ horse power motor, and for a laundry which has a 5 horse power motor, and for a few motors in the ball room for ventilation purposes, and a pipe organ, and there is a sump pump in the basement for house use and a vacuum cleaning system which has a small motor. The Arlington has two elevators, a freight and a passenger. They are the same size and have the same motors. The Arlington has 90 apartments, and the Granada 114. The relative percentage of rooms per apartments as between the Granada and the Arlington is approximately 1.35 to probably 1.38 rooms of the Arlington per apartment, and approximately 1.8 rooms in the Granada per apartment.

The Granada has a considerably larger amount of lobby space than the Arlington. I included in the lobby space the ball room, the solarium and the writing room.

Due to the number of larger units you have more occupants per apartment unit in the Granada than you
706 would have in the Arlington. There is no way of getting the exact figure per apartment due to the fact you have bedroom apartments—more bedroom apartments in the Granada per unit, you have utilization of more rooms, because in the Arlington with your kitchenette apartment units, or your Pullman kitchens, you have a room efficiency in the living room, but where you have bedroom apartments, you have room efficiency both in the bedroom and in the living room.

After that operation to determine the light and power charge to the Granada for its own purposes, I ached a correct cost total to the Granada for the years 1935 and 1936. The cost to the Granada for all the pay-roll, power, electrical, fuel oil, water, mechanical repairs and maintenance for 1935, amounting to $16,538.03, and for the year 1936, $15,845.45. There is no way of telling how much of that total cost was allocable to the Arlington only by a point of arbitration and possibly by taking into consideration the number of units, or number of rooms, and a basis of radiation in the building.

I arrived at the actual cost to the Arlington and Granada for 1935 in the amount of $4,960 and for 1936 in the amount of $4,750 by taking into consideration the cube of the three buildings, the number of rooms involved and the radiation as reported in Mr. Lewis' report of 1929. As to the
707 total cube, I had the cube figures before me and I checked the measurements so that the measurements satisfied me, and I used the cube figures as were given. For the Arlington they were 576,418 cubic feet, for the Granada 1,040,356 cubic feet, for the Manor 434,181 cubic feet, giving a total of 2,050,949 cubic feet. On the direct cube basis the percentages I approved to the different properties were 28 per cent to the Arlington, 51 per cent to the Granada, and 21 per cent to the Lincoln Manor. I didn't figure out the cube figure according to the rooms. In figuring the percentages on the basis of square feet of radiation I used the figures supplied by Mr. Lewis' report as being correct at that time. Since that time there has been a new calculation of the total amount of radiation on the building so these figures should be revised to that correction. Not having checked the other buildings I used the figures as supplied by Mr. Lewis' report in 1929 as being correct although there is a difference. Mr. Lewis said there was approximately 8,500 square feet of radiation in the Arlington. Since Mr. Lewis' report I have not measured the square feet of radiation in the Arlington but we have had it done. Mr. Brooke and Mr. Hand did it. Those two engineers checked, I think, within 20 or 25 feet on the amount of radiation of the Arlington Building. I did not adopt those figures for use here. I used the figure as supplied by Mr. Lewis due to the fact that I didn't have any other figures. From that data I found the actual square feet of radiation in the Arlington to be 26.4 per cent to the Arlington. The actual number of square feet of radiation in the Arlington is 7,038. I took Mr. Lewis' figures in making up this Exhibit 5 for identification,
708 as to the percentages I got 26.4 per cent for the Arlington, 54.5 per cent for the Granada, and 19.1 per cent for the Manor. On the cubic basis and on the basis of radiation, I gave slight leeway towards the Granada and charged 30 per cent of the cost. The room basis amounted to approximately 30½ per cent of the total cost allocated to the Arlington, 50 per cent to the Granada and 20 per cent to the Lincoln Park Manor. The cube amounts to only 30 per cent, the radiation, 26.4. I used the figure of 30 per

cent as an arbitrary figure. Mr. Lewis in his report was approximately 30 per cent so I decided 30 per cent would be an arbitrary figure and would be close enough for any point of discussion.

The result I obtained was that the total cost of the Arlington to the Granada for furnishing the service was $4,960 for the year 1935 and $4,750 for the year 1936, which would run per month on the average of $414 for 1935 and $396 for 1936.

Mr. O'Brien then handed the witness City National's Exhibits 2 and 4 for identification.

The Witness: As a result of the study that I made in 1933, that I have testified to; I wrote a letter to Mr. Hall.

Whereupon, the witness produces the document marked for identification, City National's Exhibit 6.

Mr. O'Brien then showed to the witness the instrument marked City National's Exhibit 6 for identification.

The Witness: That is a letter which incorporated
709 my findings at that time. As to City National's Exhibit 5 for identification, I did not, as a result of my own check-up and as a result of Mr. Lewis' corrected report, make any revision in my figures to correct the various estimates of expense items as made by Mr. Lewis.

Mr. O'Brien then referred the witness to two notations appearing on Exhibit 5, marked "Lewis Report of 1929" and "Lewis Report of 1934," and above those two entries appeared the corrections.

The Witness: In the second column above I gave the average cost. It says "average year." It is right under the "total" column. Under "electrical cost" is the total cost in the amount of $7,400, from which should be deducted the average yearly cost of electricity to the Granada. In the Lewis' report of 1929, he estimated the pay-roll at $5,520, and in his later report in 1934, he estimated the pay-roll at $3,500. The actual pay-roll was $2,450.

The Lewis' report of 1929, he estimated the electricity at $6,477.60, and in his report of 1934 he estimated it at $3,878. My finding as to the amount, as shown under the electricity column, $3,300.

I have no dispute about the fuel oil cost, except Mr. Lewis' report in 1929 estimated the fuel oil cost at $9,602 and in 1934, reduced the cost to $7,000, and the actual was $7,640.

The item under the column "Mechanical Repairs and Maintenance" is shown over the Lewis' report for 1929

as $6,676.88, and for the year 1934 as $6,647.80. I have
710 above that figure in the corrected column $634, as I have just used the total cost of mechanical repairs and maintenance as in the audited figures. Mr. Lewis used a return of 15% on the total investment of the mechanical equipment to cover interest return on investment or amortization coupled with a figure for repair and maintenance. He used a 15% figure for 1929. In addition to that 15% he charged in a 20% profit. In preparing my cost sheeet I omitted the profit item and I omitted the amortization and interest and took only the actual charges for repairs and maintenance, as indicated by the books. Figured that way, the total cost of furnishing the service to the Arlington was $4,850. and adding 20% to that total, would make the figure approximately $5,800.

Whereupon, Mr. O'Brien offered in evidence the report made by the witness in 1933, marked City National's Exhibit 6 for identification.

Whereupon, said document was received in evidence by the court and marked CITY NATIONAL'S EXHIBIT 6.

Mr. O'Brien thereupon offered in evidence the Lewis' reports of 1934 and 1929, which are marked City National's Exhibits 2, 3 and 4 for identification.

Whereupon, said documents were received in evidence and marked respectively CITY NATIONAL'S EXHIBITS 2, 3 and 4.

Whereupon, Mr. O'Brien offered in evidence City National's Exhibit 5.

Whereupon, said document was received in evidence marked CITY NATIONAL'S EXHIBIT 5.

711 *Cross-Examination by Mr. Woods.*

The Witness: My age in 1933, at the time I first worked in this matter, was 35.

I am an engineer by profession. My school was the Carnegie Institute of Technology, Pittsburgh, Pennsylvania.

I have done other work, for the City National. I was with the American Appraisal Company for two years and three months. Following my receiving my degree at Carnegie Institute of Technology and from there I went into the actual construction with R. C. Wieboldt & Company. I was with the R. C. Wieboldt & Company until

1929, except for a period of two and one-half years in the construction field. You are intermittently employed by the contractors in field work. For a spell of two years I was with C. F. Noyes, National Realty Company in Chicago, who managed the United Cigar Stores properties, wherein I had considerable maintenance problems. Following R. C. Wieboldt & Company in 1929, I was with University of Chicago on special engineering problems, for a period of one year and three months, on temporary work. Then I was with the Board of Assessors before coming with the City National or rather the old Central Republic Trust in 1932. My work has been practical and theoretical.

As to the practical work which I have done at the University of Chicago I designed and supervised the remodeling work. I was in direct charge of drawing up the plans and specifications and handling of the con-
712 struction, laying out of mechanical work on what was the old power plant, transforming that into a two-story shop building for the various trades. On the orthopedic hospital I supervised the laying out of the radiation and finishing up of the plans and specifications of the fifth floor of the orthopedic building at Billings Hospital. On the Ryerson Laboratory I supervised and laid out and had full charge of designing and revising all the electrical work in the Ryerson building to make that into a modern electrical plant comparable to the Jones Laboratory or rather Eckhert Hall, which adjoins it which specializes in the physical sciences; that work was not largely architectural.

I have been employed by the City National and its predecessors for five and one-half years, and I have not worked for any one else during that period.

I am not in a position to state that Mr. Hall had anything to do with the Arlington, because I was not called upon to find out who was operating the various buildings, except I was called upon to make the report and address it to Mr. Hall. Mr. Hubbart and Mr. Bickel told me to make it to Mr. Hall. I did not have any conversation with Mr. Leonard nor with Mr. Tuttle nor with Mr. Sturm.

The Court: "Let me ask Mr. Hall. What did you have to do with the Arlington?"

Mr. Hall: "I was its agent and I am still for the Arlington."

The Court: Were you getting $50 a month there?

Mr. Hall: "No, not that much."

The Court: "How much were you getting?"

Mr. Hall: $30, and similar to the arrangement that I have now. You see the buildings are right adjoining."

713 The Court: How much were you getting at the Granada?

Mr. Hall: $50, that was considered expense money.

Mr. O'Brien: I might tell the court in 1933, the old owner corporation—

Mr. Hall: The Warren-Hart Apartments Building Corporation—

Mr. O'Brien: The Warren-Hart Apartments Building Corporation was running the Arlington and it was not until—

The Court: What is that? Tell that again.

Mr. O'Brien: I say, in 1933, the owner corporation was running the Arlington and our contact with that corporation was through Mr. Hall. In 1934 the Central Republic went into possession of the Arlington, so that in 1933 when these discussions were up Mr. Hall had some contact with it.

Mr. Hall: Well, in addition to that I was the nominal President of the Warren-Hart Apartments Building corporation.

Mr. O'Brien: That is right."

The Witness: At the time that report was made the City National paid my salary. I was not asked by the debtor Corporation to make any report. Mr. Hall did not pay me anything for making the report. I am not in a position to say that Central Republic Trust Company was at that time operating those properties, but I understand they were not. The Central Republic Trust
714 came into the Arlington property about that time or a trifle before. It must have been the month of December, 1933. I don't know.

I had before me the Lewis report before I made my calculations. I did not have before me the figure showing what had been paid. I knew what the monthly charges were but I don't have the figure of the total charges paid. I took the audited figures. I took the audited figures with reference to fuel oil. I have no way of knowing how much oil was actually consumed in the operation except through the audited figures. They may have paid in one year a considerably larger sum than in another year on the basis of purchases. They had

two 8,000 gallon tanks there. My figures were not based on oil consumed but on oil purchased. The shrinkage in that oil in the tank was very slight. I do not know anything about what temperature the oil was purchased at.

I knew that there were three electrical meters in the Granada. I took the total audited figures of electricity. I did not make the calculations as to what part of that I thought the Arlington actually used in this heating and water and refrigerating operation, I deducted the estimated cost of light and power for the Granada from the total bills to the Granada. I did not get the actual figures from meters because you have too many relations in the metering in the three meters.

I took the consumption of all the light and power bills,—it was the equitable way of evaluating it. You have to calculate to get at your light from your total light, what is consumed for the building; also the separation of the power. They should charge the Granada with having
715 used whatever ratio the electricity works out in figures if they used as much for their hotel operations outside of this heat and refrigeration and hot water matter or if they used as much as the Arlington and the Lincoln Park Manor did in proportion. I would rather figure it out that way than to take the actual figures which are shown on the meters of the Arlington if you could break down the total meter charges, but you couldn't because on your light you are lighting your downstairs space on your power; you have your elevator power, you have your power for your pump, you have your power for your ballroom, which comes into consideration on that main meter for your power, because you have got two or three items in the power which are not a part of these operations. I threw into my calculation a lot of other items, namely: the hall lighting and the general house lighting. You could break down the costs of those various services and they will come close into accord with the figures shown. I have used the audit figures made by Barrow, Wade, Guthrie & Company, both in 1933 and at the present time. I did not go back to any voucher to see what was in the items as shown in the audit. I did not examine any vouchers at all. I haven't seen the laundry motor in the Granada in operation. I haven't paid any attention to it. I have been in the laundry on one occasion. I don't know what percentage of the laundry work is done in the laundry. It

may be just a small laundry with one person working
716 there. I spoke of the ventilating motor. I have not seen it in operation. I don't know whether it is used. I think that it should enter into this calculation.

I spoke of the motor on the pipe organ. I don't know whether it is hitched on the power, but the power list gives it as a power motor. The list of the motors that I have in my possession gives it as a power motor. I do not know whether it is hitched to the power circuit or the house circuit. I don't know about the ventilating motor whether that is on the house circuit or power circuit.

I don't know how the motor for the pipe organ is hitched up. I have not seen that motor in operation. I do not know whether it is ever used or not.

I said I had a present check made of the actual number of feet made of radiation in the Arlington. That figure is 7,038 square feet of radiation. I don't know the figure that Mr. Schott used in his calculation. I figured it out to be 26.4% of the total radiation based on Mr. Lewis' report of 8,500 square feet of radiation. The 7,038 feet is the amount of radiation that is by actual check.

I didn't make a check to see if that was the normal amount that ought to be and for that number of rooms in the building. Another engineer made the check so I am not in a position to state. If you had an under supply it would take an over load of pipe lines to keep that building normally heated. Assuming the actual necessary percentage was around 30 to 35% you would have to carry an over load of all three hotels that wasn't necessary for the other two hotels.

717 In making up this report for December 23, 1933, I did not know that Mr. Hubbart had refused to pay the bills all during 1933 and that he had been paying 600 instead of 940, as previously had been done. I was told why this report was desired by Mr. Bickel and Mr. Hubbart. They said they wished the calculation in reference to what the fair costs of heat, refrigeration and hot and cold water should be and how the charges should be made. They didn't tell me that they had refused to pay the bill and had reduced an actual payment to $600 all through 1933. I understand that as a result of this letter they made a charge-off in January of 1934 of $4,080. I understand that it was for billing that had been done and put on the books in 1933. I

didn't know what the situation was in reference to control as to the properties. I don't know whether Mr. Hall was operating both of them under their direction. I was instructed to address the letter to Mr. Hall. I couldn't say right now whether—, from recollection, whether it was Mr. Bickel or whether it was Mr. Hubbart who instructed me to address it to Mr. Hall. I think it was Mr. Hubbart.

The notation on the letter "Trust No. 12002" is the trust number used at the bank. That was for our file purposes.

The letter of December 23, 1933 was based on the audit and based on past history. At the foot of page 3 of my letter I say that if any reduction is made then there will be trouble with the Lincoln Park Manor. They did not ask me to write a letter about the Lincoln Park Manor. I have no idea if they made any change about the Lincoln Park Manor. I don't know if the Lincoln Park Manor is still paying the same price right through to the present time.

718 Mr. Woods then called the attention of the witness to page 3 of the letter of December 23, 1933, as follows:

"(C) Arbitrary cost as reported by Mr. Hall along with estimated figures decided by general discussion;"

The general feeling of what the figures should be were based on audit figures. That was what the discussion was for.

Redirect Examination by Mr. O'Brien.

Mr. O'Brien then called the attention of the witness to City National's Exhibit 5.

The Witness: In arriving at the ultimate proper charge I use the figure 8,500 square feet, being the Lewis' figure of the square feet of radiation in the Arlington as against the finding of 7,038 square feet. The Granada gets from the Edison Company what is called "c" rates.

The minimum demand according to that rate is not less than $50 per month.

Mr. O'Brien then requested City National's Exhibit 7 to be marked for identification.

Mr. O'Brien then showed the witness receipted bill of the Edison Company, marked City National's Exhibit 7 for identification.

The Witness: This is a bill for the Granada for the

period from April 5 to May 5, 1937. Under the demand charge is billed $164, based upon the peak demand or 82 kilowatt demand at $2 per month per kilowatt. Under
719 the "Energy Charge" there is 6,000 kilowatts charged at 2.6 cents, or $156. There is 24,000 kilowatts in addition to the 6,000, charged at 1.1, giving a total of $164. There are 3,412 kilowatts, charged at .9 cents, or $30.71. If the Granada were not supplying the Arlington and Lincoln Park Manor, its power items would not be anything like 24,000 and $3,412. It would not get the rate of 1.1 cent, and a .9 cent, except on a small portion probably on some of the 24,000 kilowatt hours. Accordingly the electric bill and the power bill of the Granada would be much higher at the rate which it itself could obtain. In arriving at my figures I did not give any credit to the Arlington on that account.

Whereupon, City National's Exhibit 7 was offered in evidence.

Whereupon, said document, marked CITY NATIONAL'S EXHIBIT 7, was received in evidence.

Witness excused.

IRVING E. BROOKE, called as a witness herein, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Brien.

The Witness: My name is Irving E. Brooke. I live in River Forest. I am a consulting engineer. I have practiced as a consulting engineer off and on since 1912 in Chicago. For the last, about 12 years, I have been running my own organization. Prior to that I was in partnership. Prior to that I had my own organization. The term "engineer" is one that is quite often misunderstood. The
720 consulting engineer's work usually embraces the design and supervision of construction of some particular class of work. In my case it happens to be power plants, boiler plants, the mechanical, electrical and sanitary equipment in connection with industrial plants, schools, office building, hotels,—various types of structures, and in addition to that, the investigation, survey and reports concerning the adequacy of equipment and methods of operation and costs of operation.

I graduated at the University of Nebraska in the class

of 1903. I took my engineering there. I am a past president of the Chicago Association of Consulting Engineers which is a body composed of the recognized consulting engineers in Chicago. I am a member of the American Society of Mechanical Engineers and American Institute of Civil Engineers.

As to any building in Chicago which I have surveyed along the lines I have mentioned, I refer to the DePaul University building, and some branches of the work in the Mather Tower. I would have to consult a list. I cannot remember many of these things. I have done considerable work outside of Chicago in the way of hotels. I was employed at one time, a good many years ago, by the Edison Company, designed some of the substations, checked power stations. I was with the Illinois Steel Company, Corn Products Manufacturing Company before I went into business for myself. I have not done any work for public utility commissions nor for the utilities themselves re-
721 cently. I made a very brief inspection of the heating and refrigerating plant in the Granada. I spent considerably more time in the Arlington examining the heating system and some of the refrigeration work that had been taken out when I visited there. I made an inspection and examination at the Arlington at the request of City National Bank and Trust Company for the purpose of a report here. My examination was a personal examination. I inspected the piping and the radiation. My assistant or associate made a very careful check of the square feet of radiation.

In the Arlington I found out there was 7,338 square feet of radiation. I heard Mr. Hertzman's testimony here. I would say from the cube of the building as to the amount of radiation being adequate or inadequate, that it was just a fair, reasonable job, neither an excess nor a deficiency. It is a correct fair amount of radiation.

The Arlington has its own piping system, which goes to the tunnel supplied with steam from the Granada from the boiler plant in the Granada. The improvement of the Arlington premises carried its own steam, pipes, water pipes and radiators. As to refrigeration equipment in the Arlington there are still many of the old boxes although some of them already have been replaced with newer refrigerating units. The Arlington had a piping system and brine coils in the individual boxes. I was informed those belonged to the Arlington.

I made an estimate to determine what it would cost the

Arlington to install its own brine system and to install its own heating plant. We made an estimate of a boiler
722 plant with fuel burning equipment with necessary pipe connections and stack and pipe covering and installation, etc.; that would be necessary to install a boiler plant in the building to serve that particular building. If I remember correctly, I think we figured on a Kewanee Portable Firebox type of burner, fitted with a structure of about 10,000 feet capacity. I think such a boiler would be adequate for the needs and requirements of that building.

Whereupon, witness produces document and Mr. O'Brien requests the document marked City National's Exhibit 8 for identification.

Mr. O'Brien then showed the instrument marked City National's Exhibit 8 for identification to the witness.

The Witness: That is the report which I made. It is the original and it bears my signature at the end of the typewriting. It is an addition to the letter of transmittal.

In a general way as far as the heating system is concerned I figured the cost of the labor and materials incident to the installation of the plant. Referring to my report here, I had an item of $400 for engineering and 10% for contingencies amounting to $702.

By "Engineering" and by "Contingencies" I mean that in order to put in a job of that kind there should be plans and specifications made and bids taken which is included in the engineering charge. Contingencies is just what it says. Unforeseen circumstances that arise in the installation of pipes, the remodeling or the cutting of holes in the building, or anything we cannot see.

I have also figured the operating expense and fixed charges incident to that installation and the operation
723 by the Arlington of its own plant. Under Item B and operating expense, Item A is the construction and installation cost of a heating system, and Item B the operating expense, and under that, the subheading B-1, interest 6%, depreciation 6%, insurance 1%, taxes 1½%, and I included a rental value of the space occupied by the boiler plant, which I considered to be very nominal, making a rough total 15% for fixed charges.

For operating charges fuel $1,580; electric current $80; ash removal $75; repairs and maintenance $200; labor and attendants $300, making the total cost of operating $3,393.50.

Those operating charges are predicated on our experience in operating cost in making investigations of the

operating costs of several hundred buildings; that is exactly what we have used here and it is what we would figure the normal cost of operation; that cost of operation might vary a little between different systems and it would vary with the degree of skill of the operator.

724 I mean by water supply system that in a building of this sort the city water pressure is insufficient to supply the upper water using fixtures so it is customary in a building of that type to put in either an overhead gravity tank or a compression tank or tanks in the basement. On this particular job we estimated a pneumatic supply system in the basement in tanks for both hot and cold water, water heaters and other equipment necessary to furnish a complete hot and cold water supply to the building. The fixed charges I figured on the basis of the same percentages as in the case of the heating system, making a total of 15%. In my judgment the construction cost of installing the complete hot and cold water system is $3,245, and the total cost of annual operation is $986.75.

Going back to the heating system, the annual operating cost, excluding what I call the fixed charges, is $3,393.50.

As to the water supply system the operating charges are predicated in the same way as in the case of the heating system.

On page 3 there is a heading "refrigerating system." This system means a 10 h. p. motor and compressor and cooler and all necessary and proper equipment. The cost of such a system is $3500. It relates to a brine system utilizing the pipes and other connections already in the Arlington property. I have calculated 15% of interest, depreciation, and other items shown as in the case of the heating and water systems and have figured my operating charges in the same way. The cost of operation, including the fixed charges, would be $1025 per year. The costs of the materials and of installation is based on present prices.

The costs are considerably more than they were five
725 years ago. They have increased during the last five years. They have not been at anytime during the last five years any more than they are today.

I calculate the total annual amount required on this basis to be spent by the Arlington for its own heating, refrigeration, water and hot water systems to be $5,405.05.

Whereupon a recess was taken until two o'clock P. M. of the same day, September 27, 1937.

Met pursuant to recess, September 27, 1937, at two o'clock P. M.

IRVING E. BROOKE, a witness heretofore called, and having been heretofore duly sworn, resumed the stand and further testified as follows:

Direct Examination (Resumed) by Mr. O'Brien.

The Witness: I heard the testimony of Mr. Schott on behalf of the Federal Trustee. I don't believe I have seen his report which is in evidence.

Mr. O'Brien then stated to the witness that the report included the charge of 15% for interest and amortization and maintenance, the charges for the three items aggregating 15%, and in addition to that it included a charge of 20% for profit.

The Witness: From an engineering standpoint, after having charged a total of 15% for fixed charges, I would say that a profit on such a business of 20% would be excessive. The 15% included 6% interest returned on the investment, as I understand, and the 20% was over and above that.

I recall that there were also various items set forth as operating charges in addition to the 15% charge for interest, amortization and maintenance, which additional items were for maintenance and repairs. I would say that those items in the operation total and also included
726 within the 15% were included twice. Those were the items of maintenance and repair. The items to which I referred and included in Federal Trustee's Exhibit R is an item of $600 appearing under refrigeration expense on the third page of the report, the item of $600 appearing under the heading "expenses" on page four of the report, and the item of $100 appearing under water house service expense on page five of the report.

Also under refrigeration expense the item for insurance and taxes of $393.09 and a similar item in the same amount under the heating expense and the one of $196.55 under water house service expense would also indicate a duplicate charge. If the Trustee's Exhibit R correctly charges in the operating detail all of the items of maintenance as shown by the books then the 15% mentioned at the bottom of the first page is for interest and amortization alone. The interest recommended in the report is 5%, which means that the amortization is at the rate of approximately 10% a year. From the standpoint of the Granada, there is not any hazard which I can see in the furnishing of this

service and maintenance of the heating and refrigeration plant which tends to justify the 20% profit charge. As a fair business transaction, there is no reason that I can think of why there should be any profit charge over and above a reasonable return on the money invested. I do not know of any basis for making the charge by custom or usage or otherwise.

"The Court: Why would anybody—suppose you and I had two buildings side by side and I proposed to you to put in a plant to take care of the two buildings. Why should you do that for a mere interest on your investment.

I might change my mind.

727 The Witness: Well, I would say that that would all depend. I am not trying to evade your question. I say that would all depend.

The Court: Do you think a profit—

The Witness: I think the courts in connection with the public utilities—

The Court: Why do you tell me there should not be a profit?

The Witness: Not a 20% profit.

The Court: Then what are you talking about? You said you didn't see any reason for any profit.

The Witness: I didn't mean that.

The Court: That is the testimony as I have understood it.

Mr. O'Brien: Will you complete your answer to the Court there? You were talking about utilities.

The Court: This isn't a utility. You have a house and I have a house. You are not a utility and I can buy it from a utility. This isn't a utility. No monopoly. Am I mistaken that this witness didn't tell me that there should be no profit?

Mr. O'Brien: I did not so understand it. I would be glad to have the reporter read that back. Suppose you read the last two or three questions and answers.

(The record as above recorded was read by the reporter.)

The Court: I inferred that he did not allow any profit.

The Witness: Certainly there should be some profit.

Mr. O'Brien: How much would it be?

728 The Witness: After proper capital expenditures and operating expenditures are taken care of—what I mean by capital expenditures, perhaps 6% on the investment, perhaps 2% or 3% above that.

The Court: Just take our case. You and I have buildings side by side. You are not a utility. You just have a building and I want you to furnish me refrigeration. Do you think you would put in a plant sufficient to take care of not only your building but my building if you would only make 2% or 3% a year out of it? I wouldn't. If you would, you are not as good a business man as I think you are.

The Witness: Well, I believe that is what has been done in many cases in establishing rates because there are—

The Court: We are not talking about utility rates. This is something else. In a utility you have to buy from them. They have a monopoly. You with your building situated beside me with my building, you haven't any monopoly. You just take a chance on my not changing my mind, or of some Trustee in possession going into possession changing his mind.

The Witness: Well, the profit should be within reasonable limits, proportionate to the risks involved. I don't think there is any question about that.

The Court: You think 2% or 3% would be ample, do you?

The Witness: Well, if all these other charges were provided for under an operating cost. What I mean is you set aside certain sums for maintenance and for repairs, interest, taxes and depreciation, that is all established as part of the expense.

729 The Court: Well 'established.' But I may change my mind. You have a plant twice as big as you need and you haven't any market for the product.

The Witness: Well, I don't know—

The Court: Well, as a matter of fact you are just crazy if you do it at all.

The Witness: I would say—

The Court: You are just crazy if you go into that, unless you have an iron clad contract with me.

The Witness: I would say that would depend on the nature of the contract in the first place.

Mr. O'Brien: Well, that was what you meant I suppose when you told the court it would depend on the original setup.

The Witness: Right.

Mr. O'Brien: Supposing the Granada had made this investment without such contract, do you think it would be—the Granada would be in as good a position to make as much

profit as in a case in which it had secured an agreement before it spent its money for the plant?

The Witness: I certainly do not. I think it would be a poor business venture on their part to establish a plant there to take care of a group of buildings without having had their understanding."

The Witness: I remember that there was some testimony about radiation being underset. My office checked the radiation at the Arlington. I found what I would consider a very uniform job. I did not find an underset or an overset, and I would say it was even.

"Mr. O'Brien: Now assuming it were underset and that the heat was being furnished by the Granada through a central plant. Would it be possible to step up the heat
730 for the Arlington so as to obtain to the conventional temperatures without stepping beyond that point in the Granada and Manor? I don't make this very plain.

The Witness: I get your question.

Mr. O'Brien: I don't understand the technicalities, but I mean can you regulate the pressure separately, can you send more pounds of pressure to the Arlington than you are sending to the Granada and Manor at one and the same time?

The Witness: No. That would make very little difference on the heat value,—that is the heating effect. The increase in pressure, steam pressure, would not materially increase the heating effect.

Mr. O'Brien: What do you mean by heating effect?

The Witness: Well, the heat given out by the radiators."

The Witness: We usually figure the number of gallons of water per person per day consumed on the average building of this type on the basis of rooms and apartments. On a building of this type I would estimate approximately 125 gallons per day per apartment. In my report, marked City National's Exhibit 8 for identification, I think I use the basis of approximately 125 gallons per apartment per day. That was when I was figuring the cost to the Arlington of providing its own service.

As I understand the records for the years 1935 and 1936, the costs to the Granada of electric light and power were considerably diminished by reason of the favorable "C" rate and the volume of kilowatts used. If the Arlington and Manor were operated separately as to refrigeration and heating, the Granada would probably pay a larger
731 rate for the electricity that it consumes for light and power. The increase would be due to the fact that

they would not have as much total electric consumption to get into what we call the lower bracket of the rate.

I heard Mr. Schott's testimony concerning the cost and economy of operating individual electric refrigerators and also his estimate of the probable cost of installation of those refrigerators and of a separate heating plant in the Arlington. I think I would only have one point perhaps to take issue with him and that would be, as I remember it, on the question of cost for current for individual electric refrigerators. I have forgotten exactly what his testimony was on that but I think perhaps a charge of $1 to $1.25 per month for those small refrigerators would be sufficient to cover the electric service.

With proper care and maintenance, I think the heating and refrigeration plants of the Granada can be used for fifteen years.

The Granada is burning oil. In relation to the cost of coal, these markets fluctuate a good deal. At the present time perhaps, conservatively, the cost of oil is fifteen to twenty percent more than coal. The Granada has been equipped to furnish service only through oil consumption. In my setup on the Arlington for its own heating plant I figured coal consumption and stoker.

Whereupon Mr. O'Brien offered in evidence City National's Exhibit 8 for identification, which is the witness' report.

Whereupon said document was received in evidence marked CITY NATIONAL'S EXHIBIT 8.

732 *Cross-Examination by Mr. Woods.*

The Witness: I was in the Arlington and the Lincoln Park Manor buildings. I wouldn't say that neither of them has ever had and has not now any basement space that could be used for heating or a refrigeration system. There was a considerable space there. I saw space in which I could put a heating or a refrigerating system. The space required for two systems and a hot water system would probably total in area 30 x 30. I did not say that I saw a vacant space there in the basement of each of those hotels sufficiently large to take care of that. I said there could be space provided there. There would have to be some changes. It would not have to be dug out and there would not have to be a foundation there and you would not have to strengthen the walls. You would have to put a floor in. I allowed for such expenses as that in the figures I made.

It is item 13 as building charges. The amount is $200. That is for the Arlington. I do not think the opening up of the basement there and putting in the necessary supports and having it ready to put in this plant would be such a big job. I also in my report have an item for contingencies of $702. A contingency is something you cannot foresee. We cannot see exactly what is under the floor there, exactly what we would have to do in connection with the underground stuff, that is what the item is put in for. We would get material in and out of that place by making an opening in the side of the building.

"Mr. Woods: You said, I believe, that if it were true that the Arlington had relatively an underset of radiation
733 that that would not make any difference with reference to furnishing heat to the Granada and the Lincoln Park Manor, is that right?

The Witness: I believe that is correct, yes.

Mr. Woods: Please read the question.

(The record as above recorded was read by the reporter.")

Mr. O'Brien: That question is rather ambiguous, if the Court please.

Mr. Woods: What do you say about that?

The Witness: Well, as I recall it I said that under—of course, it depends a great deal on what you mean. I am not trying to evade your question. As to underset it would depend on the extent of that. Within reasonable limits, no, I would say it wouldn't make much difference.

Mr. Woods: Well, if you have three rooms or three buildings and the heating equipment for one of them is relatively less for that building than the heating equipment in the other rooms or other buildings, isn't it a fact that the other two rooms or buildings are going to be very hot, and isn't it a fact that the people in those rooms are going to open the windows and let a lot of heat go out? Wouldn't you have a wastage?

The Witness: Well, I don't see how you could accomplish that by any reasonable change in operating pressure or steam supply.

Mr. Woods: I agree with you. You cannot. That is the answer."

Mr. Woods thereupon handed the witness City National's Exhibit 7; which is a voucher showing charges and payment with reference to electric current furnished by the Commonwealth Edison Company.

734 The Witness: I did not say that if the Granada used less current they would pay more for it. I think my statement in that connection was an answer to a question and I think the bill of the Edison Company in itself is a picture of the fact in that connection—that as the quantity of electricity increases the rate is lowered and if there is less current used the rate for that current would be higher. If you had the thing divided into three or four groups you would not reach the lower brackets. You would be paying exactly the same for the other brackets according to your kilowatt hour consumption. There would be no change in the rate for the given amount of power. When Mr. Schott takes for his calculation not the higher brackets but the composite of all the brackets and the actual consumption, he gives a smaller charge than any of those other hotels would have by itself. That differentiates again into whether you are talking about a charge in dollars and cents or whether it is a rate. I don't know what he did.

When I said that oil right now is more expensive than coal, I meant for the total charge, considering installation and cost of plant, etc. If I started in today to go along and if the fuel costs stay right where they are now, I would be pretty positive that the coal was the cheaper. As to how much cheaper, that again would depend on the installation; the size of the installation ad the equipment, etc. put in. We had a study of that kind here a short time ago where we put in a boiler plant that cost $175,000, and we made a very careful and very thorough investigation in this connection of coal and oil and we put in coal. No. 5 oil or No. 6 oil costs about four and three quarters cents per gallon.

735 I did not know that the Granada had coal until about four or five years ago. As to whether or not I think that a coal plant can be operated at the present time cheaper than oil, unless you put in a stoker—naturally we would figure on putting in a stoker—it isn't a question of increasing your plant cost, you would have to put in a stoker, you have no choice in Chicago. The City ordinance requires that every boiler plant burning solid fluids with over 1200 feet of radiation have a stoker or other mechanical fuel burning equipment. We figured on a stoker in the plant for the Arlington. Compared with a hand-fired job, it might be considerably more expensive than oil because there is such a large element of human labor comes in which is done away with to a large extent in the installation of a mechanical stoker or mechanical equipment. It is more or

less automatic. I said that in my opinion the current in the brackets that the Arlington would have to pay for it to operate an electric refrigeration unit of the type I have in mind, I believe a four foot box, would be $1.25 a month. I don't think there would be a great deal of difference in the actual usable space between those boxes and the present brine boxes. In the modern box the space is a little more useable, available, than in the older type of refrigerator. For example, in a modern electric refrigerator there is space provided for milk bottles, let us say, and stuff of that kind. I don't want to go into a lot of details, but those things are all worked out to accomplish the storing of food stuffs, bottled goods, milk, and so forth, in a comparatively small space. After all, it is a question of useable space not the total volume of a refrigerator.

Witness excused.

736 CHARLES S. TUTTLE, a witness heretofore called, and having been herteofore duly sworn, resumed the stand, was examined and testified as follows:

Cross-Examination by Mr. Woods.

My name is Charles S. Tuttle. I live at 306 North Harvey, Oak Park. I am a Trust Officer of City National Bank and Trust Company. I have been there since the bank was organized on October 5, 1932. I was manager in charge of the real estate loan department of the Central Trust Company of Illinois for some years and then was made a vice president of the company and continued in that position until the Central of Illinois joined with the Chicago Trust and I still continued as a vice president of the new bank known as the Central Republic Trust Company, and following that I was with the City National Bank and Trust Company.

I presume I first heard about this Granada financial situation soon after the two banks consolidated in 1931, I believe. I don't recall the dates. At that time I am not sure that I had anything to do with the Granada financial situation, except that soon after, without recalling dates, I became a member of the Committee. The Committee was organized, possibly, in 1933, I don't recall the date. About that time was when I first had anything official to do with this property.

This Committee, I presume, was formed as other Com-

mittees in the bank, I believe by themselves; the men themselves got together and organized a committee. I think I have been a member of the Committee since that date. I have little, if anything, to do with reference to get-
737 ting this financial setup reorganized. Mr. Sturm is in charge of the reorganization work as such. We had meetings of the Committee since 1933, perhaps six or eight, or maybe more. The Secretary of the Committee is usually asked by Mr. Sturm to get the Committee together. There is no kind of an agenda or record that the Committee keeps. The discussions at those six meetings about this property have varied. I couldn't tell them in order, nor could I tell you the subject of any of them. One or two, I think, were in connection with the question of whether a broker who was talking about buying the bonds, if he were to offer a certain price, would we consider that price. We didn't get to the point of considering a price, though we were asked to consider a price, as I recall it, of 20. I don't recall when the Committee was asked to take 20 for the bonds. I am sure there were other suggestions discussed, but I cannot recall them. As far as laying any plans to get this property out of reorganization, as I have said, such plans are worked out by Mr. Sturm and the men under him. I personally have nothing to do with that.

I have a short file of my own on this matter. I think Mr. Sturm has a similar file.

At one of those meetings, we discussed with reference to taking the matter out of court if the Committee had enough bonds to go ahead. We couldn't go to court at the time. I assume you meant the starting of foreclosure proceedings or continuing the one that was already started.

I heard of the proceeding in this court about this property which went to the Supreme Court of the United States. I approved of that proceeding as far as it was brought to my attention. I was told afterwards that $4000 was spent on that law suit. I didn't approve that payment, that payment didn't come to me for approval. I don't think I had anything to do with that.

738 I have been up to the hotel, perhaps two years ago, only once. At that time I thoroughly went over each of the two buildings under discussion. We were not considering reorganizing the buildings as a unit. We did not even consider that as it came to me. To my recollection the Committee never discussed reorganizing these three buildings as a unit.

"The Court: Do you know who determined the policy,

Mr. Tuttle, that your Trust Company would remain in possession of this building after the property was brought to this court in this case?

The Witness: I didn't hear that, your Honor.

The Court: Read that.

(The record as above recorded was read by the reporter.)

The Witness: I do not know who determined that.

The Court: Do you know who changed the mind of your company in respect to that proposition?

The Witness: I didn't know that its mind was changed, your Honor.

The Court: Well, it was, as expressed by your counsel-

The Witness: I still say that I don't—

The Court: (Continuing.) —and not until the Court informed your counsel that the Court was going to endeavor to take possession through its Trustee and that if the Court failed in taking possession through its Trustee it would vacate the order approving petition as properly filed—not until that was done did your counsel advise the Court that you had concluded not to remain in possession. Did you know that?

The Witness: No, sir.

739 The Court: Do you know of any officers of your company that did?

The Witness: No, sir.

The Court: Have you discussed that with any of them?

The Witness: No, sir.

The Court: Does that reflect the policy of your company?

The Witness: I have nothing to do with the policy of the company.

The Court: You have nothing to do with it?

The Witness: No, sir.

The Court: Go ahead."

The Witness: I don't know when I learned of this present litigation in this court for the reorganization of this property. I presume soon after it was started, although the dates I haven't at all. If you told me that the petition was filed on the 23rd of April and that the order directing the Trustee of this Court to take possession was on the 17th of May, I couldn't say what time along there that I first heard about it. I must have heard that the Court had directed a trustee to take possession of the property. I do not think there was a Committee meeting at that time. I don't recall whether I have attended a Committee meeting since that time. I don't know that there has been a peti-

tion filed here asking for expenses and fees of the Committee in this proceeding. I haven't discussed that with anybody.

Witness excused.

740 WILLIAM H. SCHOTT, a witness on behalf of the Court Trustee, recalled, resumed the stand, having been previously duly sworn and further testified as follows:

Redirect Examination by Mr. Rosenstone.

The Witness: I have had an opportunity to look over the report of Mr. Brooke, City National Exhibit 8.

I have checked the various items under the heading of operating expenses for water. The equipment outlined here in the specification seems to be in line with about what would be required, so that the cost in that department is somewhere around where it would be, that is the installation. Now on the operating items he has $225 for water. I figured $204 for that item. I estimated that that building would require 3,000,000 gallons of water.

On the electric current he estimated it would take 9000 kilowatts and I figure $225 on that. He has figured on the current $125.

Now, there is an item left out and that is the coal required to heat the water. That would take one hundred tons, which at a $6 price would be $600 a year.

Under repairs and maintenance we agree.

As to fixed charges we agree.

Now on labor to operate that plant along the lines we were talking about would take two men seven months in the year and one man the other five months. Those men will cost $100 a month a piece so that on the labor the water department would be entitled to charge for one-half of the summer labor which would be $50 a month, which would make a charge of $250 for the five months.

741 That would make a summer operation cost of $100 a month and splitting that $50 to the water and $50 to the refrigeration would make a labor item of $250 for the entire year on the water, making a total of $1865.75, including the fixed charge. Mr. Brooke did not include in his operating expense anything for fuel. I split the coal for the heat and hot water and part of that coal would be used in the hot season. The two would make the total for the year one

hundred tons. In either case, whether the heat is on or not, it is a charge to the water department being the amount of coal absorbed by the hot water system.

On Mr. Brooke's testimony that he figured 125 gallons per apartment per day, that would make the entire yearly consumption 3,600,000 gallons. I estimate that that can be operated with 3,000,000 gallons of water. The actual consumption at the Arlington, based on my figures, runs 2,970,00 gallons. They would use more water as an independent plant than operating as they are because of certain leakages in the boiler, so the 3,000,000 gallons a year there is a conservative allowance for what they would use.

As to the refrigeration system, Mr. Brooke has estimated $3500 for a complete system and 10 h.p. motors or compressors. He probably has the price on that so that may be somewhere near correct. As to the operating expense, I agree with him on the gas and brine. On the power he figures at $1652 there are 65,000 kilowatts as against $200 for electric current.

As to water in the amount of $175, I got the same as he has got. I assume the same on repairs and maintenance, and on the labor $255 instead of his $50.

742 I have arrived at the labor cost by taking one-half of the one man's expense during the summer months and arrived at a total of $2702.

As to an explanation why I arrive at a much greater figure for electric current than Mr. Brooke has estimated, one has to figure an average of sixteen hours a day operation on the compressor. Your circulation is continuous and when you figure out the current required it will run into that k.w.

In the heating plant, taking installation of the plant, there he has apparently overlooked one item and that is any boiler capacity for his heating system. He has overlooked the excess capacity required for heating the water. They should have a 12,500 to a 13,000 foot boiler instead of a 10,120. That will increase the capacity of the stoker 150 pounds in capacity, so his boilers and stokers are too low. Then there should be a submerged type of heater in the boiler instead of a tank with coils in it. He has figured a submerged type in his boiler cost, but his boiler is too small and his stoker is too small. The other items are probably somewhere around right excepting as to the cost of changing the building for installation. On a check-up of that they might have found a space in there by simply putting in a pit. I did not examine the basement of the Arlington Building from that standpoint.

As to Mr. Brook's operating items, he figured out that it will take 300 tons of coal at $6 which would be a fair price on the fuel, or $1800 a year for fuel.

As to power required, he figures 8880 kilowatts at a cost of $222.

For ash removal I accept the same as his, $75.

743 As to maintenance the same.

As to labor $1400, two men at $100 each, seven months of the year. His figure for labor is $200 as against my figure of $300.

Fixed charges make the total $4855.30.

In determining the labor cost for heating the hot and cold water and refrigeration, I would say that two men seven months and one man five months would be required there for a year. I have allocated a certain portion of this labor expense to each one of those services.

In regard to the fuel for heating in the amount of $1800. I have not included in that item the fuel expense for the water supply. The $1800 is the heating of the building and $600 the heating of the water, so that my estimate is $2400 all told for fuel.

The installation Mr. Brooke has reported on is based on coal for fuel and I am figuring on a coal that can be bought at $5.75 to $6 a ton. That will answer the work perfectly and will be the cheapest fuel to use.

I have made a total of the operating expenses on all three items for a year in the amount of $9,323.05. The Arlington total bill, based upon corrected figures from my former report, would be $9,751.09, not allowing for rental for the space. In determining the figures under their independent installation, I have put nothing in for a profit. I have, in determining the amount that I recommend that the Arlington should pay now, recommended that they pay a profit or pay a sum that would net a profit of 20% to the Granada, the 20% being based upon the operating items only. There is no profit on the depreciation,—that is a fixed charge.

744 I stated to you that I have rechecked my report which is in evidence, and wish to make a slight correction. In putting together my totals I got a part of the Granada totals over into some of the subdivision that should be charged direct to the Granada Hotel. In other words, the item appearing on the last page of my report which is $251.24 should be $530.52. Now that gives a credit to the heating department of $287.98, a debit to the water department of $10.33, and a credit of $1.44 to the

refrigeration. The consolidated sums now are $15671.87 instead of $15540.93. That is the cost of their share of the expense. That is the Granada's total cost of refrigeration, heating and water service, plus house lighting and power. It is not for the buildings. That they absorb. It would increase their bill and cut down on the others. It decreases the Arlington costs from $9,857.03 to $9,756.09, and the Lincoln Park Manor cost is decreased from $5,969.13 to $5,898.13, making the grand total now $31,321.10 instead of $31,549.01.

Those are the only corrections except on the current rate to the Arlington, just a slight change in that end of it. The Arlington rate now over the year would be $812.59 instead of $821.42, and the Lincoln Park Manor would be $491.51 instead of $497.44.

There are three electric meters in the Granada. The house meter records the current used in the hall lighting system that is charged to the Granada. The hall lights run from the hall meter and the house lighting takes care of everything else in the way of lighting; all of the apartments and that is the electricity that is consumed by the guests in the hotel. There is no other current that goes through that meter that is used for any other pur-
745 pose. The other meter is the one power meter that takes care of all the power requirements of the building, including the power that is used in furnishing the service for the other two hotels.

Of the total power record that was chargeable to the Granada, the passenger elevator service, the freight elevator service, the vacuum cleaner, the laundry and bath and the kitchenette fan system and the miscellaneous fans throughout the hotel—the passenger elevator is a matter of estimate and I arrived at that conclusion by figuring it carried a 20 h.p. motor and has a travel of 200 feet per minute, and a capacity of 2000 pounds per hour—I took the total number of rooms in the building which is 203, and I figured that there would be a round trip twice a day for each room which made 604 round trips a day, with an average of a third floor up and down of 60 feet, and I reduced that to car miles and where the average load will not run over three or four hundred pounds per trip, I used the total capacity required for the total load on the partial load so as not to favor the other parties and give them the benefit of the doubt, so that I would say that the hotel is absorbing more current in that direction than they would be entitled to as its fair amount.

Now the passenger elevator consumption is 10119 kilowatts and that at the current rate makes a total of $176.30. I have charged that in my computation to the Granada Hotel solely.

The next item the freight elevator has a 7½ h.p. motor and only travels 100 feet a minute and has the same capacity. I allowed for that on a basis of 12 hours a day, a 400 pound load 6 days a week and worked that out, and that will require 3353.4 kilowatts, and at the current rate a bill of $53.65 a year. That was charged solely to the Granada.

746 Now the vacuum cleaning system based upon the hours operated and the connected h.p., etc., figures out 1611.36 k.w. and at the current rate a bill of $25.78.

The laundry has got a 5 h.p. motor, and figuring five days of operation 7½ hours a day per week, or 7273.5 k.w. at the current rate $116.37.

The circulating fans for the bath rooms and kitchenettes that run eighteen hours a day, 4,901.22 k.w., a bill of $78.42. Then on the ball room fan and the organ and some of the miscellaneous spots very seldom used I allowed 5000 k.w. or a total of $80, or making their power bill total $530.52 instead of $251.24, which I had originally.

In determining the charge for power to heating, refrigeration and the hot and cold water from these meter readings, I deducted all of the items chargeable against the Granada and segregated them as a whole. In the house pumping there is a 15 h.p. motor that delivers 442½ gallons in a minute and thirty-five seconds, and then it is off about nine minutes so that I figured out from that the k.w. per hour was 11.19, and taking the pumpage over the year figured at 552.76 hours at 11.19, a total of 6185.38 kilowatts, making the power at the current rate $98.96. On the hot water system is a 3 h.p. motor in continuous operation. On the circulating system operating continuously, the current requirement there is 19,584.88 k.w., making a bill of $313.35.

The vacuum cleaner has a connected motor of 2 h.p. of 1.492 k.w., operates 40 hours per week, and that makes a current consumption of 1611.36 k.w. and a bill of $25.78.

The oil pump which operates 17 hours a day and uses 0.373 k.w. or 2312.6 k.w. per year has a bill of $37. There is one oil burner that has got a connected load of 1½
747 horse or 1.199 k.w., operating 4080 hours annually, or 4565.5 k.w. with a bill of $73.04. There is one oil

burner with a ½ horse power, or .373 k.w., operating 2040 hours per year, or 760.9 k.w., or a bill of $12.17. The laundry five horse power, or 3.73 k.w., operating 1950 hours per year, 7273.5 k.w., or $116.37. Passenger elevator 11019 k.w. $176.30. Freight elevator 353.4 k.w., $53.65. Bath room and kitchen fans ½ h.p., each, continuous operation, 4,901.22 k.w. or $78.42. Allowance for air compressor, sewer pump, lobby and ball room fans, limited use as some of them do not run once in six months, 5000 k.w., or $80. The two vacuum pumps have 2 h.p. and have one pump which operates two months out of the season. I mean one pump operating 2 months and one six months, both operating; total k.w. 5676, or $91.81. That makes the totals, Granada 176,442; water department 25,770; heating department 13,315; refrigerating 241,813; total 457,340.

There is every reason in the world why The Arlington should pay a profit for the service that they have been getting from the Granada. I don't know of any business that can continue without a profit. With the fixed charges all taken care of it is customary to add, where you are working down to as close a b. is as this, a profit on the operating items to allow for things that may come up that you don't allow for and that is why I took the percentage of 20%. The 15% on the depreciated value of the property is an operating item. That is strictly a fixed charge item and nothing was allowed on that. The 20% is based solely on the operating items.

748 I made an inspection of the refrigerating system in the Granada Hotel. I didn't pay any attention to the piping system in the Arlington Hotel for the simple reason that I was trying to arrive at what was the cost to the Granada at the point where the generation took place. I am familiar, in a general way, with the boxes and the system in the Arlington Hotel. I know, in a general way, the character of the boxes that are used there.

If that system is properly taken care of, like a prudent man would take care of his own property, and properly maintained and repaired, I don't know of any reason why they could not get ten or fifteen years out of it yet, that is, based upon its present condition.

Recross Examination by Mr. O'Brien.

The Witness: If the Arlington could get service at anywhere near the same price as being furnished by the Granada, I would recommend that they pay more money to the Granada for service rather than build and service their own plant. Assuming that they could operate their own plant cheaper than what was requested by the Granada, based upon their engineer's setup there, they had better save their fixed investment and pay it out to the Granada as they are than to have the investment in there and be relieved of the operation, because in all those operations I generally find that there is a lot of items that they have got to pay the bill but they don't get it in the reports.

For the purpose of liquidation and sale of any one of the properties, I would say they would be in worse shape with their own plant. It would be easier to sell the building if it were dependent upon another for this serv-
749 ice. It is all a question of the man buying it; his opinion; some people like to be independent and operate their own, and another man that will figure right down to the last notch, he will keep his money out of it and pay the bill, and when he gets all through he will pay his bill and he hasn't got any money tied up.

I think with prudent care the plant at the Granada may last another fifteen years, both the heating and refrigeration. As to the basis of depreciation which has been deducted for the last thirteen years, the trouble is that the whole thing has been a paper proposition. If they had actually made the deduction and set up a reserve to have taken care of it, they could have taken care of their entire plant out of those reserves and had it in just as good a condition as it was originally.

As to whether or not I think at the end of the fifteen years that the Granada is still entitled to deduct their 15% a year on a plant which at that time had already been depreciated by 100%, I would answer the day is coming around when it has got to be rebuilt. Assuming that it has to be rebuilt at the end of fifteen years, that would be in 1939. Supposing that they use the same plant that is there and it is good for fifteen years more, I still think the 15% deduction is justified.

Mr. O'Brien then showed the City National's Exhibit 4, which is the January, 1934 report of Mr. Lewis and

asked him to look at sheet 5 of that report and tell whether he is in substantial agreement with what Mr. Lewis says there.

750 The Witness: I want to go back a little further than that. I want to know what this is trying to do; whether this is operated outside or inside; it looks like it is from an outside source. I don't think the basis of computation is correct. Referring to the heating. I do not agree with him in one direction. He is not allowing enough condensation for the connected layout as it is installed in the building. The 582 pounds per square foot per person based upon the requirements of the building would be O.K. The Arlington has got set 7,197 feet of radiation. Then allowing the usual 25% for the piping system or 1,798, would make a total of 8,995. Well, he is about right on that because that might require on the Arlington 8,846, which shows the building as 150 feet overset. Yes, his 8500 is all right on that. His basis of computation at 582 pounds will be all right based upon his having made an allowance for that.

The Arlington hasn't anybody employed in this kind of department. I don't know if they are employing anybody. I don't know what the new agreement is with the Janitors Union in respect of the number of men required in the operation on a building like the Arlington. I didn't take that into consideration, but the basis of the labor charge that I set down is the fact that two men will be required,—two for seven months of the year and one for five months of the year. I thought it would cost per man $100 per month, or $200 for seven months and $100 for five months. The basis of that difference from Mr. O'Brien's report as to the labor charge arises as I have just stated. The labor on the refrigeration and the

751 heating is not all in the one item. I take in the entire charge of labor and heating; that is of the heating season. The other five months, I split between the water and the refrigeration. As far as that one item is concerned the difference in my figures on each of those items comes about in that way.

I am assuming that Mr. Brooke has a submerged type of heater in there. I don't know whether Mr. Brooke bases his figures in part upon actual bids received from contractors. The difference on the cost there would simply be the increased capacity. That is all I figured.

As to whether or not I still think the four-foot individual

unit electric box would consume $2 a month electricity, I checked one up that cost him $4.65. I think it would cost at least $2.

Witness excused.

Whereupon an adjournment was taken until Tuesday, October 5, 1937 at the hour of ten o'clock A. M.

Met pursuant to adjournment October 5, 1937 at ten o'clock A. M.

Whereupon a recess herein was taken until the hour of two o'clock P. M. of the same day, October 5, 1937.

752 Met pursuant to adjournment on October 5, 1937, before the Honorable John P. Barnes.

Present:

Mr. Woods.
Mr. Rosenstone.
Mr. O'Brien.

Thereupon W. E. TOON was called to the stand and cross-examined by Mr. Woods:

My name is W. E. Toon. I live at Oak Park, Illinois, and am Assistant Trust Officer of the petitioner, City National Bank and Trust Company. I have been connected with that bank since its organization October 5, 1932. At the present time I am attached to the Corporate Trust Division of the Trust Department and have under my control the operation of certain of our Corporate Trust accounts.

(The witness produces original ledger sheets showing the accounts with the Granada Estate as they were in May, 1937, and as they were at the date of hearing. The cards so produced were marked Court Trustee's Exhibits T and T-1 to T-10 for identification.

(Witness resuming.) Trustee's Exhibits T to T-10, inclusive, are all of the cards in all the ledgers representing accounts between City National Bank and Trust Company and the debtor, Granada Estate, which were active in May, 1937, or at any time since with the exception of the general bank account in the banking department. There is a separate ledger sheet for that.

The witness at the request of Mr. Woods produced four additional sheets which were marked Court Trustee's Exhibits 7-11 to 14, inclusive, showing the commercial ac-
753 count with Granada Estate carried with the City National Bank and Trust Company. Cards marked Ex-

hibits T to T-14, inclusive, represent all of the financial matters between Granada Trust Estate and City National Bank and Trust Company, either individually or as Trustee.

Photostatic copies of the cards marked Court Trustee's Exhibits T to 14, inclusive, were offered and received in evidence under those respective numbers. Court Trustee's Exhibit T is a ledger record maintained in our coupon department evidencing a balance of cash on hand of $4.78 which is the residue of the balance turned over to us on January 10, 1935, as Successor Trustee from Central Republic Trust Company. We still have that balance.

Court Trustee's Exhibit T-1 is a ledger record maintained in our coupon department and covers a present balance in our hands of $27.70 representing the residue of a payment of 2% income tax. We had that balance on May 17 of this year and still have it.

Court Trustee's Exhibit T-2 is a record maintained in our coupon department and evidences a cash balance of $36.00 for the payment of unpresented past due interest coupons. We have had that money since January, 1935, and still have it.

The balance of $82.10, shown on the back of Court Trustee's Exhibit T-8 is the balance of our account designated Trustee in Possession Account.

754 Court Trustee's Exhibit T-9 is an account designated Reserve for Government Tax, Unemployment Compensation Fund and shows a present balance of $182.66, payable to the Government. On May 17, 1937, that balance was $120.63. On May 20 there was a credit of $39.84 covering 2% of the payroll for the month of April, 1937. On August 2 an additional credit of $22.19, covering 2% of the total payroll for the month of May, 1937, was added. The balance shown has not been paid to the Government because it is payable annually.

The Court Trustee's Exhibit T-10 is an account designated Decree Distribution Account and shows a present balance of $1,507.76. We have had that money since May 17, 1937.

Those accounts are not necessarily demand accounts. A demand account, as I understand it, is one that may be demanded immediately and paid over. That Government account for instance is an account for the collection of tax for the United States Government that must be paid at a specific time. I don't know anyone else that can demand it except the Government.

"Q. You think that Government account is one that you could not pay over to the court here and have the court pay the tax?

"A. I think that we are charged with paying that money over to the Government.

"Q. You think the Trustee of this court is not charged?

"A. That I do not know.

755 The witness continuing: If it happens to the law that the Court Trustee is charged with the payment of that money we would seek advice of counsel. If counsel advises us to pay it over, we will pay it over. We have not yet paid it over to the Government or to the court. If it were the law that that money had to be paid before the end of the following month we would be in default in payment. Moneys represented by these various accounts could not be paid over to the court on the 18th of May because they were especially designated in certain cases as to the purpose of the funds deposited. The Government tax account is one. The Decree Distribution Account is moneys that were applied under the decree of the State Court. We have not yet applied the moneys under the decree but are holding them in a separate fund designated for that purpose. Money put in the Decree Distribution Account was put there on October 29, 1936, two months before the Decree was entered. We had made out report to the court as to the balance we had on hand and it was our practice in making such report to the court to deposit those funds in a Decree Distribution Account in order that the funds might not be disbursed until the decree is entered and the court orders its distribution.

"Q. The decree was entered in December; you have not yet taken the money out and applied it in any way, have you?

"Mr. O'Brien: Just a minute. I object to that, your Honor. That calls for the legal conclusion of the 756 witness as to the event of that whole transaction.

"I think it is perfectly plain that when the money is set aside, taken out of the trustee-in-possession funds and put over in that decree distribution account, under the practice that the witness has testified to as to what the purpose of it is and when that is followed by decree, of which counsel has a copy, showing that the court offset that balance on hand against indebtedness due the Trustee, I think it is very plain that that is not the money of the debtor.

"Mr. Woods: Well, your Honor, we will show here that that decree is utterly void, for a great many reasons, when we get into the legal argument.

"I am asking him the fact, whether he did take the money out of this account and apply it in any manner, as though that decree authorized him to do it.

Witness resuming: We did apply it in reserve against the order of the court by setting up a decree distribution account, the funds to be applied pursuant to any decree that might be entered. The money is still in our possession. Court Trustee's Exhibit T-10 is the only account we have with reference to that money.

Referring to the last item on the front side of the Court Trustee's Exhibit T-7 I don't know that there is an erasure there. The entry there now purports to have been made May 25. I don't know when it was made.
757 I did not make it myself and don't know who did. I did not direct that it be changed.

Those moneys were kept in various accounts because it is not our practice to keep only one account. We must ear mark various accounts for various purposes in the operation of our trusts. We sometimes find it more simple to have ten accounts than one.

The money is used for the particular purposes for which it is set up in the accounts. We transferred money from one account to another, depending upon the circumstances that might call for transfer. We took $15 out of Court Trustee's Exhibit T-1 and put it over in T-2. In other words, we took it out of the residue of the 2% tax account to provide for the payment of a coupon due March, 1930. In Court Trustee's Exhibit T-7 we transferred on May 25 of this year $500 from the trustee-in possession account to the commercial account. The decree distribution account T-10, was a transfer in the beginning from the trustee-in-possession account. Money could be transferred from one account to another, if those transfers were made for the purpose of setting up particular funds for particular purposes; the occasion might not arise where you would be called upon to transfer to any account. I don't believe the money all belonged to one trust. I think that the reserve for payment of the Federal Government tax on returns made is the property of the Government. I think we must hold that decree distribution account. We have a balance there that has been applied by the State Court.

758 Referring to Court Trustee's Exhibit T-10 there is set up a decree distribution account and the decree in the State Court finds this particular balance of $1,608.56 as applicable on account of certain prior liens.

The moneys represented in these various accounts came out of the net income from the Granada Hotel property.

I don't remember when I first learned that the Federal Court had ordered money and property of the Granada Estate turned over. I don't know that anybody told me. That property was handled in our property management department and in our reorganization department and I may have secured the information by someone telling me or by seeing a copy of the order. I don't remember. I didn't do anything about that order as it was handled through our property management department, of which Mr. Bickel is in charge.

Examination by Mr. O'Brien.

I am willing to pay over, if the court so directs, the $36.00 covering September 1, 1931, maturity of interest coupons.

$27.68 excess tax account, and

$4.68 on deposit in the accrued interest account at the bottom of page 1 in my report and account. The method of handling accounts on the books in the case of Granada property is no different than any other trust carried in the bank.

759 The funds in the coupon account are held for the benefit of holders of unpresented coupons. Had the holders of those coupons presented them to the bank up until the time that the trustee in bankruptcy was appointed, they would have been paid.

JOHN J. BICKEL, JR., witness heretofore called, resumed the stand and was further cross-examined by Mr. Woods:

Referring to Court Trustee's Exhibits T-3 and T-4 I cannot tell you why a sum in excess of $10,000 was carried in the trustee-in-possession account for a period of about fourteen months. I knew at that time that there were large sums of taxes unpaid. I had nothing personally to do with the item of March 19, 1935, showing payment to attorneys under a Skarda proceeding. I presume that the person in charge of the payment of taxes

out of these accounts or an item of that kind would be Mr. Sturm. My responsibility ceases with obtaining the income and turning it over. My job is to operate the properties. I had nothing to do with spending any of the money in the account.

The money shown to have been received by Court Trustee's Exhibits 11 and 14 came from the rents of the property. That fact is not shown by these sheets. This is a commercial account. I believe I have previously testified as to the balance of $200.20 shown by the final sheet. The City National Bank is a bank of deposit. When a customer comes to the counter and asks for his money, we pay it if he has the money there. As I have
previously testified you have a check in your posses-
760 sion for $188.00 which reduces the balance of the
account which we have filed to approximately $12.00. I know that that check was drawn payable to the order of City National Bank and Trust Company for management fees up to May 17. Whether you refused to permit that check to be paid or not I know we have not received the same yet. Mr. Hubbart informed me that he submitted the income statement to you and that check was based on the income.

"Q. You don't know, then, that when that check was drawn neither the item nor the check was submitted to me?

"A. I think the figures were; Mr. Hubbart informed me they were."

I know something about the item of $4,080.00 on the books of the Granada at the hotel which was charged off at the end of 1933. I don't recall that that was done at my direction. I think it was done at the direction of the corporation, which at that time was subject to Edward Hall's direction. That is the same Edward Hall who appears as agent in numerous places in Court Trustee's Exhibits 5 to 10, inclusive. At the time the bank took possession of the Granada he was retained as agent for the Trustee and was paid, I believe, $50.00 a month for supervision and assistance to the Trustee.

He supervised with Mr. Hubbart the affairs and operation of the house, visited the property, determined renting policies, supervised the maintenance, together with Mr.
Hubbart, was present with the manager frequently
761 and saw that the personnel functioned efficiently and
satisfactorily. In other words, all the duties that the operator of a property had were assumed by Mr.

Hall along with the Trustee. After the hotel manager, Mr. Parker, Mr. Hubbart and Mr. Hall performed their duties there wasn't a great deal for me to do in relation to that one specific property. We have a lot of properties in the bank that I do not pretend to operate or be closely familiar with any one, being head of the department having as many buildings as we do. When questions of policy or other questions come up Mr. Hall and Mr. Hubbart would consult me and we would try to arrive at a logical solution for every problem that came up.

Thereupon Court Trustee, Mr. Woods, offered and there was received in evidence COURT TRUSTEE'S EXHIBIT U which is a contract with reference to services between the Granada Hotel and Arlington Hotel over the objection of Mr. O'Brien that the contract which was dated October 1, 1927, was made with Frank E. Barton, who at that time was the owner and operator of the Arlington Hotel and not with the Arlington Building Corporation, or with the Warren-Hart Apartments Inc., its successor or grantee, and on the further ground that there was no showing that Mr. Barton was the owner or that the contract was ever in use either by assumption of right or otherwise, as far as Warren-Hart Apartments Inc. is concerned.

At this point there was also offered and received in evidence as the COURT TRUSTEE'S EXHIBIT V, a prospectus which was issued by the Chicago Trust Company with relation to the Granada issue of 1924 over the ob-
762 jection of Mr. O'Brien that the prospectus, which was issued by the Chicago Trust Company, was in no way binding upon the City National Bank and Trust Company.

Thereupon a check for $13,000, dated August 23, 1933, drawn on City National Bank and Trust Company to the order of Chicago Title and Trust Company and the voucher on which it was issued was received in evidence as COURT TRUSTEE'S EXHIBIT W over the objection of Mr. O'Brien that it was inadmissible because City National was appointed Successor Trustee and went into possession of the property in January, 1935.

Thereupon there was marked for identification as Court Trustee's Exhibits X-1 to X-10 respectively certain pages of the printed transcript of record in Cause No. 4228, United States Circuit Court of Appeals entitled "Winstrand *vs.* Albert Pick & Company" consisting of an order by Judge Wilkerson granting a temporary restrain-

ing order against Master in Chancery Max A. Korshak and Pick & Company, and ordering a $2,000 bond as security for costs so filed, injunction bond in the sum of $5,000, the order of Judge Wilkerson approving said bond, the order of Judge Wilkerson requiring additional injunction bond in the sum of $20,000 and his order approving said bond, decree of Judge Wilkerson vacating the injunction and dismissing the suit, the appeal and supersedeas bond in the sum of $40,000, signed by Elof Wenstrand and the Indemnity Insurance Company
763 of North America, the suggestion of damages filed by the successor to Albert Pick & Company in District Court Case No. 8817 after denial of certiorari to the United States Supreme Court, injunction writ, answer filed by Elof Wenstrand, answer filed by Indemnity Insurance Company of North America, the transcript of testimony which was taken before a Master with reference to damages on said bonds, the motion slip dated September 11, 1933, showing that the suggestion of damages was compromised, settled and dismissed by the District Court. The Exhibits so marked were received in evidence as this COURT TRUSTEE'S EXHIBITS X-1 to X-10, respectively, over the objection of Mr. O'Brien that they are immaterial to any question presented before the court in the present hearing as they go to the propriety of the disbursements made on account of the receiver's certificate issued in the State Court proceeding.

PHILIP R. CLARKE, was called as a witness and being cross-examined by Mr. Woods, Court Trustee, testified as follows:

My home is in Hinsdale and I am the President of the City National Bank and Trust Company. I recall coming to your office about the 27th day of August. I don't recall at that time that you asked that certain moneys be paid over to the court. I do recall that you were very anxious to see Mr. Leonard. I don't recall that you showed me the order of court with reference to turning over certain moneys. I won't dispute
764 that you did, but I don't recall it. Court Trustee's Exhibit B does not refresh my recollection on that matter. I don't recall that I asked Mr. Bickel what the occasion was of Judge Barnes ordering this bank to turn over any money. I recall that Mr. Bickel gave me a

general explanation of the occasion. I don't remember what he said. I have not made any inquiry since that time to see whether Judge Barnes' order was obeyed. I have merely made inquiry from Mr. Leonard as to whether he was giving his personal attention to this matter and he assured me that he was. I made sure that Mr. Leonard was attending to it and as a responsible head of the bank, gave no further concern to it after that but left the whole matter to Mr. Leonard. Matters of that kind are seldom brought before the Board of Directors and was not in this case. Nothing pertaining to the Granada matter has ever been before the Board of Directors that I recollect. I have heard that a previous case dealing with Granada was carried to the Supreme Court of the United States by the Committee who were officers of my bank. I didn't see any of the papers pertaining to that case. It was not brought before the Board of Directors to my recollection.

I didn't have anything to do with the organization of the Bondholders' Committee for the Granada. I do not know why it was organized in our bank. I don't know specifically how our bank got this trust business. I have probably seen the name Granada but the matter never came specifically to my attention until you men-
765 tioned it the morning you came to my office. I am not able to see why the money in question was not paid over to the Federal Court. The only procedure I have for knowing that a trust remains on our books for a considerable number of years without disposition is that I have general conferences frequently with Mr. Leonard. I would not know anything about it unless he came and told me. I am sure that I would be informed by Mr. Leonard if he felt that we were guilty of any particular dereliction in the matter of the administration of any trust. He is the head of our trust department.

By merely looking at the item of $1,507.76 at the end of the foreclosure decree distribution fund and at the item of $83.10 at the foot of the trustee-in-possession account and the item of $11.65 at the foot of the general account, which are the items at the end of the last three columns on the last sheet of Court Trustee's Exhibit B indicating the balance on May 17, 1937, I am not able to form any conclusions as to why those moneys were not paid over to the court. I have already said that I heard nothing of this case until you came in my office and know nothing whatever about it.

ARTHUR T. LEONARD, having been duly sworn resumed the stand and was cross-examined by Mr. Woods, as follows:

I testified a few days ago in this case. I learned about this reorganization proceeding within a few days after it was filed on April 19, 1937. I was consulted and told that there had been an involuntary proceeding
766 started in Danville and that a later voluntary one had been insfituted here and that in all likelihood the reorganization could now proceed. I believe that I was told that before the Trustee was appointed on the 17th day of May. The matter came to my attention before Court Trustee's Exhibit I, which is a pleading filed in behalf of City National Bank and Trust Company in this case, was filed on May 17, 1937. I had nothing to do with the filing of that pleading. I presume it was Mr. Helffrich, Mr. Toon or someone in the corporate trust division who directed its filing. I knew that there was a hearing on the appointment of a trustee in this case but I didn't know it was on May 15. I don't know the date. I knew about that hearing before it was held in court. I discussed the policy to be adopted at that hearing, which was that we were to endeavor to have the court to permit us to remain in possession of the property so as to maintain continuity of management. I later heard that the court did not feel that way and had indicated that if that point was pressed the petition would be dismissed and we, therefore, withdrew from our position. I discussed that matter with Mr. O'Brien and, as I recollect, with Mr. Sturm and Mr. Bickel, very shortly before the order appointing the trustee was entered, assuming that order was entered on May 17, which was a Monday. I could not say definitely whether the conference was on the previous Saturday or not. The conference took place in my office and my directions were
767 that we would withdraw any objections to the appointment of a trustee. I have not before seen the petition filed May 17 in the Clerk's office, which you say sets forth that the court had no jurisdiction and could not take possession away from the City National Bank. (Witness reads the document.) I don't believe this denies that the court has jurisdiction. It merely reserves the right to object to it, but I don't believe it in effect challenges it. I don't recall whether it was before or

after that document was filed that I decided that we would turn over possession of the hotel property. I gave instructions with reference to it to Mr. Bickel and Mr. O'Brien. I didn't go into detail with them as to whether those instructions included anything besides the hotel management itself. I didn't discuss the turn-over of documents or money. I assumed they would take care of all of that. That was part of their work. As I recall it, Mr. Bickel reported to me some conversations that he or Mr. Hubbart had with you in reference to documents and money which the court trustee wanted. That conversation was to the effect that there were certain bills outstanding against property which they wished to pay while you wanted them to turn over all the cash without some of these bills being paid, and that certain bills had been agreed upon that could be paid and you were demanding that the balance of them be paid, although we had no further funds in our possession with which to pay them. It was Mr. Bickel that said that we had no further funds. I did not send for the ledger cards but assumed that he knew exactly what the state of the account was. I have investigated the entire
768 matter. I have not examined the ledger cards. I have seen the audit which you presented and I have satisfied myself that they were correct. The audit was Court Trustee's Exhibit B. I first saw it when you presented it to me at my office. I would not be sure of the date as being July 28. I presume you know the date. That was the first time you saw me. You came to my office with Mr. O'Brien. I believe that at that time we discussed all of these matters. The matter which is shown by that audit and, in general, all the items which are in litigation now on the bank's petition. You furnished me at that time a written memorandum showing the various things that you intended to object to with reference to the account of City National Bank and Trust Company. At that time you asked me to correct all of these matters and I told you that I would try to give you an explanation of all of them and all of the information you wished. You told me at that time that the house fund of $400 had been taken away from the hotel after your appointment without your knowledge or consent.

You said that these items which are shown at the foot of this account, Exhibit B, were moneys which belonged to the estate, and must be paid over to the trustee, although at that time I was not familiar with the char-

acter of the items and subsequently upon investigation I disagreed with you and still do. At that time you spoke of Judge Barnes' order. I didn't on that date, nor had I previously, looked at the order. In these discussions with Mr. Bickel and Mr. O'Brien I did not ask for the order of Judges Barnes. When we had this discussion
769 there on July 28 with you, Mr. O'Brien and myself, I said that I thought we had handled this matter in a confused way and that we should have done it in one way or the other. Either turned over all the money and all the bills or the reverse. I believe the next day I received a letter from you. I don't recall that your letter was not answered. I do not recall writing any answer to it. I generally don't handle correspondence in matters of this sort.

You came to my office again on the 27th day of August about these matters. That is the day you saw Mr. Clarke. On that date you showed me this document of Court Trustee's Exhibit B and read to me and Mr. Bickel the order of court with reference to the turnover. Then and now I do not believe that the order controls these moneys and as we have said then and now, if we have an order from the court to turn over these moneys, we would do so, but in our opinion they were not the property of the debtor and were not covered by the order. I did not hear the testimony of the gentleman yesterday that all of these moneys came out of the operation of the property. The moneys that you referred to at the meeting in our office was not in our hands as trustee-in-possession. They had been turned-over in the decree in the foreclosure proceeding to the trustee under the Trust Deed, which happens to be the same institution. It was taken out of our account as trustee-in-possession and was paid in a separate account to be applied on the debt. It was no longer in our possession or part of
770 the funds in our hands. This order refers to the funds in the hands of the trustee-in-possession. This audit of court trustee's Exhibit B was intended to be a full disclosure of all of the facts and all figures. There is no attempt to hide this money that we are discussing. I don't know why it took until August 25 to find the facts that are shown in that audit. They were always available.

The trustee was told all summer long that we had no funds because it was the fact. We had no funds at all as trustee in possession. It is my contention now,

in the face of that order, that we have no funds as trustee in possession. I don't recall what my explanation was on August 27 when I talked to you and Mr. Bickel. I do not think there has been any change of attitude on our part right from the start when I first heard about it. We have been advised by counsel and that is where we stand. I told you at that time that we refused to turn over the money because of advice of counsel. We have never failed to obey an order of court and I don't believe we ever shall. We have not in this case in my opinion and in the opinion of counsel.

We have further stated that if the Court would expand the order to cover these funds, or enter an additional order we would immediately comply with it, but that in our opinion and in the opinion of counsel, this order does not cover these funds. I don't know to my personal knowledge but I presume, that our counsel was in court when this order was entered. I don't believe that any effort has been made to have that order modified since May 17. We have not asked an appeal from that order 771 at any time because, as I said before, in our opinion and in the opinion of counsel this order does not cover that money.

My idea is that the court has general jurisdiction in this case and has authority to direct the trustee in possession to turn over any and all funds in its hands as long as it covers the property of the debtor. If it is not the property of the debtor then it is not covered by a general turn-over order. My idea is not that all anybody has to do is to say that the money belongs to John Jones and the court is powerless to direct that it be turned over. As I stated before my idea is that the court has complete jurisdiction over the property of the debtor. It is not my idea that we have a claim on some of these moneys. My idea is that this money does not belong to us, it does not belong to the debtor here—it is not in the court at all. We don't claim to own that money as a bank. The bank has no claim on it itself. It is in the hands of the bank as trustee under the mortgage.

I do not personally own any Granada bonds nor certificates of deposit. The City National Bank and Trust Company does not own any such bonds or certificates nor, so far as I know, do any of its officers. I have not heard of any trusts or contracts by which City National Bank and Trust Company or any of its officers have any interest in such bonds or certificates.

772 *Redirect Examination of Mr. Leonard by Mr. O'Brien.*

I recall of your advising me of the filing of the involuntary petition at Danville against the Granada Apartments and of your subsequently informing me of the filing of the involuntary petition here, which were later consolidated for hearing and proof by Judge Barnes. I recall that you asked me what the position of the bank and the committee was in respect to the question as to conflicting of jurisdiction between the two courts and whether the proceeding should be here or at Danville. I instructed you that we certainly would not oppose either of the jurisdictions but would keep a neutral position as between the two jurisdictions. You told me that both of the proceedings were good and that a reorganization could be effected in them. I recall advising you prior to the first hearing before Judge Barnes that neither the Committee nor the bank, as trustee, would oppose the court's jurisdiction to approve these petitions. I read the transcript of the proceedings which took place when the matter first came up here. After the hearing on that day, the first time the matter was on here before Judge Barnes for the approval of petitions, you requested a meeting at the bank and we had such a meeting. Mr. Helffrich, Mr. Sturm, Mr. Tuttle, yourself and I think Mr. Bickel was there. You said that the court had indicated his intention of dismissing these petitions if we stood upon
773 the petition which the trustee had filed to retain possession. We both agreed that we would not stand on it. The counsel were instructed to so inform Judge Barnes. I do not know whether they saw Judge Barnes, but I assume they did. I don't know the date that the bond of the trustee in bankruptcy was filed and approved.

In our report and account filed in this proceeding we offered to make such distribution of funds as the court might direct. So far as I know there has never been an order to file a report and account. It was brought in voluntarily. In that first conference which we had with you and Mr. Woods in July of 1937 we told Mr. Woods you were going to present a report. I don't recall that Mr. Woods indicated that we should settle the items in reference to the heating business, the lobby space and what not. As I remember it, these various items that he brought up were new to me and I said that we would go into them and give him all the information that we could and try to facilitate his arriving at his own conclusion that there was no impropriety there. I remember telling him that I did not

see that the bank had done anything improper in the matter and that it would bring its account to court so that these matters might be then considered.

As to these unpaid bills I recall that you told me that you intended to present a petition to Judge Barnes and that Judge Barnes orally indicated in open court that you take that matter up with the trustee and be paid such bills as he might check and O. K.

As I recall it, the letter that the trustee wrote me
774 following the conference in July was merely confirmatory of the things orally discussed in that conference. We have definitely answered the trustee orally in that conference. I told him that I disagreed with him on the position of these items and that the matter would have to be covered when our report came in. I don't believe I had any further answer to make on receipt of this letter.

As trustee under the indenture the City National Bank may hold property for the benefit of any number of people. It may be coupon money, or tax money, or money to be applied on the debt. It has been my position that City National is unwilling to adbicate as trustee and to dispose of the trust property, the mortgage security, until the lien of that mortgage is discharged in some way in this proceeding. There are certain papers which we claim the right to keep until that time. That is the mortgage policy, the original trust deed, the certificate of survey and various other papers.

WEIGHTSTILL WOODS, Court Trustee, appeared as witness in his own behalf:

Direct Examination by Mr. Rosenstone.

I am a lawyer with offices at 77 West Washington Street, Chicago, Illinois. I was appointed trustee by an order in this cause on May 17, 1937. My bond was approved May 20, 1937, and I have acted as trustee since then. As soon as my bond was approved in order to enforce the order of May 17 with respect to the collection of funds and assets
and other property held by the City National Bank and
775 Trust Company I notified City National Bank and Trust Company, talked to Mr. Bickel, and went to the hotel and took over the possession of the property there. Mr. Hubbart and Mr. Hall were there at the time I made my first visit to the hotel. I asked Mr. Bickel to turn over

all the papers and money which they had. A few days later I prepared a letter which is court trustee's Exhibit A, and mailed it to the various persons named at the head of that letter.

Referring to Exhibit A dated June 1, Item 1 thereof consisting of two bonds were turned over a few days later. I think Mr. Hall brought those to me. Item 2, consisting of $30,000 of second mortgage bonds have never been turned over and I understand are still over at City National. Item 3 is a list of the bondholders and creditors and claimants with their names and addresses. I got that as far as I could out of the court records here. Nobody ever furnished me with that list. Item 4 which is owners' guarantee policy, abstract of title, opinions of letter, all deeds and other title paper for all real estate or personal property, in which debtor has any interest—I have never received except the letter of opinion which Mr. Rathje furnished me. Item 5 is service contracts between the hotels. Some time later I asked Mr. Hall if he could find those and he brought certain contracts and documents to me. I don't know whether they are all of the documents. He produced
the contracts which was offered in evidence here yes-
776 terday, made between Barton and the Granada Hotel
Corporation and he produced certain opinions made by engineers with reference to that contract. I don't recall at the moment what they all were, but there were several of them.

The income tax returns and other tax returns that had been made by debtor, which is Item 6, have never been furnished by anyone. Item 7 consists of appraisal, surveys, blueprints, drawings of buildings, grounds and machinery owned by debtor and all engineers' reports as to the condition and operation of the same. Except for the engineer's report that Mr. Hall brought and the blueprints that I found at the hotel, I have never received any.

Item 8 is all moneys which from the audit now being made shall be shown to be in your hands or otherwise due from you to the debtor. The only moneys which came in was the check that I had received before that time on May 25 for $773.80. I had called Mr. Bickel three or four times between the 20th and the 25th and asked him to send over the money and papers which they had and he said that he was going to pay his bills. I told him that was contrary to the order but I could not modify the order and he said that he would have Mr. O'Brien come in and get the court to change it, and he didn't do that and I finally told him on

the 24th that I was going to report the situation to the court. So Mr. O'Brien that day asked the court if they could pay some of these bills. I heard the court tell
777 Mr. O'Brien that he might pay such bills as I would approve, so Mr. O'Brien came to my office with a batch of bills and I checked them over and had them check over at the hotel and I said I would not object to the payment of those bills. Those bills were for merchandise and utility services at the hotel.

The next morning I called the hotel and told them to send the bills to me again, together with the checks, as I wanted to see the checks before they went out and when I looked them over that day, I found an additional Item which had not been in there at all the day before, consisting of a bill and a check to the City National for trustees' fee. That check was about $200.00. I called Mr. O'Brien and told him I would not release that. That I could not consent to it and I have retained that check and that bill in my files and still have it. When the bills were presented to me on the day before there was nothing of that kind and nothing was said about any payment to City National for its services. The day Mr. O'Brien called me and said that he had this money, $773.8 , that he was willing to pay over, I told him that I would not take it without an audit and he said that he would pay it without prejudice and I told him that if it was simply a payment on account without prejudice, I would take the check. He wrote me a letter to that effect.

(At this point there was offered and received in evidence COURT TRUSTEE'S EXHIBIT Y being a letter dated May 25, 1937, from Defrees, Buckingham, Jones & Hoffman by Vincent O'Brien, being the letter immediately
778 above referred to and EXHIBIT Y-1, being photostatic copy of the City National Bank and Trust Company check dated May 25, 1937, for $773.40.)

Since that time I have inquired frequently with respect to obtaining other funds from City National Bank and Trust Company which I claim they have. There were no books at the hotel which showed what moneys the City National had. There was no way I could find out until they gave me an audit. I didn't receive that audit until August 25, but in the meantime I had made a check and had my auditor go through the records with the hotel on various matters for past years and I went over the property myself and I determined that a number of matters should be discussed and ought to be considered with refer-

ence to an accounting by the City National Bank and Trust Company. I made up a memorandum of those items and went over to Mr. Buckingham's office and spent some time with him discussing those items and a few days later, on the 28th of July, I went with Mr. O'Brien to discuss them with Mr. Leonard. I had furnished Mr. O'Brien a written memorandum of those items.

I asked Mr. Leonard to straighten out those affairs and told him about the taking away of the moneys after the 17th of May before I got to the hotel. I asked him to correct all of those matters. I left him and Mr. O'Brien in conference when I departed that day.

The items that I discussed with those gentlemen were the moneys that were taken away on the 18th and 19th of May.

There was also a question of the renting of the ball
779 room, the writing room, the solarium and the directors' room. There was the matter of the charges between the hotels and the matter of the incinerator. Perhaps one or two others. I do not recall now. One of the items discussed was the trip to the United States Supreme Court with reference to the Harris *vs.* Tuttle litigation. I told them I didn't see how they were going to justify that. I told them I didn't see how they were going to avoid making compensation to the estate for the failure to rent all of that front space, referring to the lobby, solarium, writing room and ball room on the first floor. They didn't seem to think it was necessary to rent that space at all. They didn't indicate that any effort had ever been made to rent it.

I don't know whether I discussed the incinerator that day or not. The incinerator consists of a place to burn the garbage, which is down in the basement in a large stack which goes clear through to the top of the building. It is built of brick. I have examined the incinerator inside and outside a number of times. I think it was around the middle of June that I first examined it. Upon subsequent inspection, I found that there were openings entirely through the inner wall of the incinerator; that the arches in several places had fallen in. The interior had to be entirely rebuilt.

I took bids from a number of contractors and had it rebuilt. I had the arches around the doors re-built and the stack re-built inside for a distance of twenty-four feet
780 at a cost of approximately $500.00.

(There was offered and received in evidence as TRUSTEE'S EXHIBITS Z-1 TO Z-5 five pictures of the incinerator, one being an outside view and four inside views.)

The pictures clearly show the conditions which existed at that time. In one or two places here at the first floor, the inside wall was entirely broken through for a distance of two or three feet and there was a large crack on the inside of the incinerator in the basement and a similar large crack in the corridor wall at the back of the stack.

When I took possession there were no funds in the hotel office petty cash account at all. Mr. Hall came to my office late in the afternoon on the 18th and said that they had a $400.00 hotel office account there and that the bank had taken it away. I told him that that should not have been done and that I would be up there as soon as I could get my bond approved and that I expected to find everything in exactly the condition it was when the order was entered. When I got there I found that that $400.00 was gone and all of the other moneys which had been collected on the 17th were gone and the manager was operating without any cash at all in his cash drawer to take care of the normal operation of the hotel.

As soon as I received the audit on the 25th of August I called Mr. O'Brien and called his attention to the items at the foot of the last sheet. I said I wanted that money. He said he would have to think about it. I waited until the next day and didn't hear from him and called Mr.
781 Leonard. They said that he was at luncheon and a little while later they called back and said that he had gone to play golf.

The next morning I went to his office and waited about half an hour and finally Mr. Bickel came. I told him I wanted the money and showed him the audit. He said they had some other things to consider and they were not going to pay it over. I said "I want to talk to somebody final here—where is Mr. Clarke." He didn't think it necessary for me to see Mr. Clarke but I insisted and he took me to Clarke's office.

I showed Mr. Clarke the court order and told him I wanted the money. He said he didn't know anything about it. He asked Mr. Bickel why the court had ordered it turned over. Mr. Bickel said it was such a complicated matter it would take both him and Mr. O'Brien to explain it. Mr. Clarke telephoned a while to different people and finally asked me if I would not wait until Mr. Leonard came.

I waited until around 10:30 and finally I was admitted to Mr. Leonard's office. I read the letter to him, showed

him the audit and told him that I wanted the money and he called Mr. O'Brien on the 'phone and talked to him a while and said that under the advice of counsel he refused to pay it over. So the next day, or a day or two afterwards, this petition, which is now here under consideration, was filed. Mr. Clarke I spoke to is the president of the bank and testified yesterday. Since filing the peti-
782 tion here no further demands have been made upon the City National and nothing further done than what I have done here—asked witnesses here on the stand to pay it over.

Hearing resumed on October 6, 1937.

Cross-Examination of Weightstill Woods by Mr. O'Brien.

After I was appointed Trustee I had various conversations with you about the matter of account and data and papers and things that I wanted.

The check for $773.88 was turned over to me May 25. That is the date that the letter was sent over to my office by messenger.

You were at my office the preceding day, the 24th, in the afternoon. We had a preliminary discussion about the unpaid operating bill. That was the same day that you orally brought the matter to Judge Barnes' attention. You brought the bills that you wanted to pay and I looked them over on the 24th. I think it was generally understood that there were other operating bills not available that day. There was no discussion that day about giving me a check. We didn't mention the matter of a check until the 25th, which was the day you called me and said you wanted to send it over. There was not any question on that day in reference to your turning over the balance without awaiting the receipt of the other operating bills. There was the question of an audit. I knew that there were other operating bills. I am not sure whether I knew that day that you had other outstanding bills or not. I don't think you knew either, that day. I don't remember you telling
783 me that you had not been able to get in all the bills, particularly those from utility companies and there is nothing in your letter about it which you wrote the following day. My letter of June 1st, 1937, setting out a list of documents was addressed to all the people that I had been able up to that time to learn the names of who would be concerned in the operation of the property. I

do not recall, but you may have said on receipt of that letter that you would make a check of all of the files, not only of the City National but of the Central Republic, and others, and try to find those documents which I wanted. I didn't know that Mr. Hall got a good many of the things with which he supplied me from you. I didn't know where he got them, except on one occasion he told me that he had got a document from City National Bank. I don't recall that you personally turned over any document to me pursuant to my letter of June 1st except the check and the tax bills and the audit towards the end of August.

I gave Mr. Hall a receipt for the two bonds, which are Item No. 1 in my letter, but I didn't know at that time where he got them. I made inquiry of Hall as to the circumstances and conditions under which he held the $30,000 of second mortgage bonds and demanded them as soon as I knew they were outstanding. You told me what your contention was about the circumstances under which they were held. I told you that I thought they belonged to the trustee and you didn't have any right to hold them, but you did tell me what your intention was and exhibited the instrument which you claimed supported that contention.

You also told me you had concluded to cancel those 784 $30,000 of seconds under order of court. You may have told me when I inquired for a list of bondholders and creditors, Item 3 in that letter, that the debtor company had the list.

One of the things that the trustee was to do was to publish notice of the hearing fixed by Judge Barnes' order and send out copies of the plan to the second mortgage bondholders. As to the first mortgage bondholders, the notice was to be sent only to holders of non-deposited bonds. I had no way of knowing whether the Owners' guarantee policy and abstracts of title, if any, were in possession of the debtor company. City National Bank, as trustee, had been running various affairs of the debtor in reference to the personal property and in reference to the real estate. They seemed to be handling the whole situation and Mr. Rathje, I think, told me that he did not have the guarantee policy. In making the demand I don't know that the specific term mortgage guarantee policy is mentioned. There is language there in the document which includes all papers in reference to title.

I have been unable to find any receipts signed by City National showing that they had any Owners' guarantee policy or abstract of title or deeds; that is the only way I

could be sure. I think Mr. Leonard testified this morning that he had those documents and you contended that you should hold them. The only opinion letter I got was from Fred Rathje. I got a water press copy later from you on the Title Company form. That was furnished towards the end of the summer. I think the title letter was
785 made in March. Mr. Hall turned over to me, besides the Lewis engineering reports and also the Martin draft or copy of it, or both, a copy of the heating contract between the Granada and the Arlington. I cannot be sure without checking the files whether there are any other signed contracts or not. There were some unsigned copies. There were no copies of the Barton contract. There are copies of other contracts other than the Barton contract, between the Granada and the Arlington without signatures on them. Whether the originals were ever signed, I don't know. There appear to be two. I have not seen executed copies of them. I could not find out whether they were executed unless somebody would produce the original.

I went to the Granada to take possession the day my bond was approved, May 20th. I called in the morning as soon as the bond was signed, and told the management that I would be there that day. I don't recall your telling me that whenever I was ready to go you would arrange to have Mr. Hubbart or somebody at the bank there to meet me, but Mr. Hubbart was there when I went.

You may have been in my office the day I telephone Mr. Parker at the hotel, I am not sure. I told Mr. Parker I was coming out that day and I went that day. I don't know whether Mr. Hubbart was there waiting for me or not. Mr. Hall was there.

"Q. Well, did he tell you Mr. Hubbart was there?

"A. They were there with Mr. Parker having a discussion about bills.

786 "Q. I don't care about the discussion. But did he tell you he was there waiting to turn over possession?

"A. Well, he left immediately after I arrived. Nothing was said about possession."

(Witness resuming.) I never before took possession of any other property as a court officer. I conferred with Mr. Cunningham in respect to what mechanics or procedure is usually followed in taking possession. I don't remember when it was. I think perhaps on the 19th. I remember that when you talked to me there was brought up beside the question of the approval of these bills the question of the breakdown of the payroll

for those two days, May 15 to May 17. I had previously discussed that with Mr. Hubbart. You mentioned in your letter the moneys on deposit with the bank for social security tax. I was willing that it should be paid direct to the Government and I didn't know until I got this audit that you had not paid it. I didn't express any preference for you keeping it as against turning it over to me. I said it was satisfactory to me if you paid the Government, but you didn't do so and I am still liable. We have a Government ruling that the successor is liable. My auditor makes out a return for the preceding month for social security tax and I pay it that way. I understand that one is in default if one does not get it in the following calendar month following the accrual.

I have had occasion to make up an audit, or see one made up, covering several years of operation of a property
787 of this kind. I should think such an audit should be completed in four or five days. I remember you telephoned me and told me you were going on a vacation and asked whether it would make any difference if this matter were to await your return. That was in the middle of July. I was glad to continue it one week.

I was told by other quarters that you had a book relating to the Granada hotel affairs. Five or six copies of it were prepared in your office. You sent me a copy which you said was your private copy. I still have it.

The $400.00 house fund was there in the hotel when I was appointed, but it seemed to me just as much a part of the hotel as the lobby chairs. I cannot see any distinction. It didn't make any difference who put it there. I don't know who put it there except what the witnesses have testified here, that it came out of the operation of the hotel. I have no personal knowledge of where it came from as I never heard of this hotel prior to May 17. I don't know whether it was sent down there from the bank or how it got there originally.

There was money, checks and cash taken in on the 18th and 19th at the hotel. Most of that money was check and you could not very well have cashed checks with checks. At that time of the month you don't get currency, you get checks. I had no authority to cash the checks. My duty is to put everything in the bank. My bond had not been approved. There was nothing I could do about it on
788 the 18th and 19th. I tried to get my bond immediately, but I had to get a copy of the order and I had to make my application; it took two days.

I think I have given the incinerator out there adequate attention. I looked at it about the middle of June. I had to have it rebuilt at the bottom entirely. I didn't get a court order before doing so. I had in mind at one time hooking up the incinerator with hot water heaters so as to supply hot water from that source. That is why I didn't attend to it immediately.

When I was appointed, the approximate yearly rental was $100,000. I think the nettage before tax would be about $2,700.00 for May of 1937.

As of September 30, 1937, the arrearage in rent collections was less than $1,000.00. That includes not only rents, but other charges to the guests.

Mr. Schott said that he could not confer with me about the proper charge for heat and refrigeration, hot water furnished by this property to the other two properties, until after he had completed his report. I didn't tell him anything about the charges that had been made at any time nor did I tell him anything about what sum was in the respective litigation here. Prior to getting his report I talked to Mr. Loveless, head engineer at the Western Electric Company. He inspected the premises, but I didn't ask him to make a report. Mr. Schott examined the property sometime before I had Mr. Loveless up there,—perhaps
789 six weeks before. Mr. Loveless never got to the point of stating to me what he thought these services were worth. He wanted some additional information and I got busy with other matters. He has not made a report as yet. Besides Mr. Schott, Mr. Loveless and Mr. Clarence Johnson, consulting engineer of 29 South La Salle Street, there was no one that I talked to who told me what the charge was for these services.

I found out very quickly after I went in that the Granada was furnishing these services. I immediately told Mr. Bickel and Mr. Hubbart that I wanted more money for the services to the Arlington.

I served demand during Judge Barnes' absence that unless I was paid $1000.00 a month I would apply to the court to have the services shut off. I followed that up with a letter that unless the moneys were paid by noon on the day on which I was talking, I would shut the service off. I was at the time collecting $600.00 a month and was furnishing no heat during that time. I stood ready to give the heating service at any time that it was necessary. I don't know the number of units at the Arlington that were already operating with individual electric refrigerators

owned by Arlington. I never tried to find out. It was not any of my business.

At the time I filed my list of objections in this proceeding I was aware of the zoning ordinance and its effect, in relation to this Granada hotel property. Before filing
790 this petition I didn't make a search for cases decided by the Supreme Court of Illinois bearing on the question as to the right and power of the trustee in possession to make alterations and improvements calculated to produce additional revenue. I made an investigation of the law to determine whether the trustee in possession was entitled to compensation for services in operating the property and found a statement in Ruling Case Law to the effect that they are not entitled to compensation unless they have a specific provision for it. I read the trust deed in this case and found they are not entitled to any compensation. I found a provision to the effect that the trustee should be entitled to reasonable compensation for operating the property under certain conditions but those conditions do not pertain here. I so set forth in my answer and counterclaim. Before preparing and filing the formal and printed objections here, I furnished your office and the bank with a memorandum of those contemplated objections. Reference to that memorandum was made in the conference which I had with you and Mr. Leonard. He had a copy of it in front of him at that time. I don't remember Mr. Leonard making any suggestion as to the seriousness of charges of that kind being made against the trustee. There were matters which I thought should be corrected. I supposed they were serious statements and charges. They speak for themselves. In the conference with you, myself and Mr. Leonard on July 28 I said that those matters must be taken care of. As near as I can recall, you and Mr. Leonard took the attitude that none of those items were of any
791 importance. I do not recall that Mr. Leonard told me that you didn't think the trustee had done anything wrong which would warrant its making any payment. I recall Mr. Leonard said that whatever Mr. Bickel had done he would approve and stand behind it.

"Q. Do you have any pending application for the renting of this lobby space, or any part of it?

"A. I have talked to a number of people the last two months about it, yes.

"Q. Well, will you answer the question? Have you any pending application for the renting of that space, or any of it?

"A. I think I could make a lease if I had a sufficient tenure to make it; but my tenure only runs for fifteen days at a time."

I haven't made any effort to close a lease. I have talked to and been considering the persons who are interested in the property. I haven't any formal application or request for a lease.

I didn't make any specific study of the law of Illinois in respect to the right of the mortgagee in possession to make a lease extending beyond the period of redemption. I wouldn't want to say what the law of Illinois is on that without looking it up.

I think I could get a tenant for the Directors' room for one year. The ball room space and the solarium and writing room I think would take perhaps two or three years. I do not think you can get a person to take it for a single year. I know that it was determined by this court that
792 the stock of the Granada Apartments, Inc. and also a large portion of certain of the junior evidence of indebtedness are and for a long time past, have been owned by the Ingersoll heirs. The record also shows that prior to that determination those items all on deposit with Fred Rathje in escrow or as trustee were claimed by the Ingersoll heirs and by Wenstrand. I have no knowledge as to when they acquired those interests. I was not concerned with who had them or when they got them until the claims were filed here in court. If these proceedings had gone forward here two years ago, you would have been in exactly the same situation you are in now. The court would have determined that matter then.

I didn't make any check or investigation with any of the title officers, or anybody else in the Chicago Title and Trust Company, to see if one can get a title policy covering the reorganization proceeding in 77B predicated on involuntary petitions not based on an act of bankruptcy or an equity receivership. I don't know that even today, the Title Company will not issue such a policy except where the debtor corporation comes in and files an answer amounting to a voluntary petition.

I didn't find out nor ask any of you whether you had ever tried to get the corporation to file that kind of an answer in the old proceedings.

"The Court: Did anybody?

"Mr. O'Brien: They certainly did.

"The Court. Who made the effort?

"Mr. O'Brien: I did.

793 (Witness resuming.) I do not know that if the Granada should choose to send its valet work out to various local dealers that it can obtain a commission from them equal to the amount that the valet of the Granada was paying to the Arlington. I am told you can get ten or fifteen per cent but I didn't inquire about it.

There was a proceeding pending in the Circuit Court of Cook County brought by the Attorney General—People *vs.* The Cody Trust Company, which is B-282129, which was pending in 1934 for the winding up of that company. Charles A. Albers was appointed receiver and is still acting.

I knew that Reconstruction Finance Corporation was said to have loaned some $80,000,000 or $90,000,000 to the Central Republic Trust Company. They pledged a lot of assets to secure that loan but I don't know whether they pledged them all or not. I have looked into certain phases of that loan.

I think that about in April of 1934 the Chicago Title and Trust Company, as receiver in the State court foreclosure matter made a payment on account of the receiver's certificate of indebtedness.

"Q. In your written objections you say that City National made that payment. Do you care to correct that at this time?

"A. Well, I say in there that they are responsible for what their predecessors did, because they did not make proper inquiry.

794 "Q. No. You say that the Trustee, whether the City National or its predecessor, made payment. Do you mean that literally?

"A. Well, I could not tell without checking just when the different items were paid."

(Witness resuming.) I think there is language in the order directing the surrender of possession by the receiver to Central Republic; that the trustee assumed payment of the receiver's certificate of indebtedness. There is also language in the order to the effect that the receiver, within so many days thereafter, file its final report and account and that on approval of that account, certain funds in its possession be paid on account of the receiver's certificate of indebtedness. I could not say without seeing the checks the specific amounts that had been paid by the receiver on account of the receiver's certificate. I find orders to the effect that at the time the receiver's certificate of indebt-

edness was issued by order of the State court the right of Albert Pick & Company, or its successors, in and to the items in question had been determined both by the decree of the Chancery Court and affirmed by the upper court.

"Q. Well, do you know—can you think, under those circumstances, of any other way of keeping this property intact and keeping it occupied, than by acquiring those fixtures, items there owned by Albert Pick?

"A. Well, Mr. Sturm testified here the other day
795 that in the case of the Lincoln Park Manor, they did not buy the furniture. I don't know why the Arlington did any different.

"Q. Did Mr. Sturm also testify that the Lincoln Park Manor is being operated by Logan-Mullins as receiver?

"A. I do not see that it makes any difference whether it is operated by a receiver or by a trustee; it is the same proposition.

"Q. Well, it so happens, does it not, that the furniture of the Lincoln Park Manor is owned by the owner of the equity to the real estate.

"A. I don't know that.

"Q. Well, you did not check to find out about that?

"A. I did not check to find out about it, no, sir.

"Q. On the Granada, the items in question were owned by an outsider, the International & Industrial Securities Corporation, which had no other interest in the property.

"A. There were all the other items in the Granada which had been taken out by the Pick Company, owned by an outsider.

"Q. That is right. That was the furniture, and the furniture had been replaced, had it not?

"A. Yes; and the Appellate Court of Illinois rules that you could take out all of these additional items without any harm to the building; that is what they put in their opinion.

796 "Q. Did you make the check to see if those could be replaced if they were taken out?

"A. Well, they are standard furniture. I suppose you could buy them from any furniture dealer.

"Q. You think they were furniture?

"A. The witness here on the stand the other day who went up there and examined them, testified he could buy them from a number of houses here in Chicago.

"Q. Well, are you sure he could? Let me put it this

way: Supposing that Picks took out their furniture, as you call it, these—the Ozite, all the carpeting, all of the in-a-door beds, all of these big kitchen cases and china cases; do you think you could have kept your tenants?

"A. Of course, you would have had to supply other furniture or have to rent these."

(Witness resuming.) Some of the tenants in there today supply their own furniture. They do not want to use the hotel furniture. I am not sure that any of them supply their own china cases, which are the dividers between the kitchenette and dining portion of the room. I am not sure about there being any apartment in which they supply their own in-a-door beds. They do not supply the big kitchen cases for service from the corridor outside. I presume those are fastened.

"Q. I gather from your questions that you thought somebody ought to have gone out and sued on the circulars, and let Pick take out their stuff; is that correct?

797 "A. Well, if the trustee, while it has power under the trust deed to deliver that personal property, it certainly would have the power to make people pay for it who had agreed that the bondholders had a lien on it and should keep it.

"Q. Well, do you think they should have let Pick take out the stuff while they were having all that?

"A. Well, if I had been handling the lawsuit I would have brought these other people into the lawsuit and would have had the Court make them pay Pick for it."

Redirect Examination by Mr. Rosenstone.

There are bills which have come in since Mr. O'Brien's letter dated May 25, 1937 which were contracted prior to May 17, by the City National Bank. Sometimes bills have been paid by me. I paid the City of Chicago $25.00 to keep the awning out in front. That bill had been running since January but was not presented to me until the latter part of June. They were going to take the awning down. Then I paid the Illinois Bell Telephone for service prior to May 17 in order to have the service continued. I also paid City of Chicago the water bill prior to May 17 to keep them from cutting the water off. In each instance before paying I sent the bill to City National and called Mr. Bickel and O'Brien and told them they were threatening to cut my service off and I wanted those bills taken care of. They didn't pay them and I had to.

Neither Mr. O'Brien nor anyone else, before June
3 25, ever suggested there was any uncertainty in the
order of any specific thing in the order of May 17
ich was a basis for the refusal of the City National
nk to pay these funds over to me. No one ever sug-
sted there was any uncertainty in the order until we
re half way through this trial.

The funds on hand, as shown by the various accounts
ered in evidence are evidenced by six items. Exhibit T
ows a balance of $36.00; Exhibit T-1 a balance of
7.70; Exhibit T-2 a balance of $4.78; Exhibit 9 a bal-
ce of $182.66; Exhibit 10 a balance of $1,507.76 and
hibit T-14 a balance of $200.20, totaling $1,959.10. The
m of $160.47 referred to in Mr. O'Brien's letter of May
is included in T-9. Toon testified yesterday that the
vernment had been paid. The Government Agent came
my office once and wanted the money and I told him
at the City National should have paid it to him. He
sn't been back since.

Recross Examination by Mr. O'Brien.

You sent to me the audit, which is a copy of the one
ached to the report and account, on August 25 and I
lled you up and told you I wanted the moneys con-
ned in the approved distribution account. You said
at you wanted to look into it. I think I called you back
e next morning. I didn't go to the bank the next day.
went to the bank at 9 in the morning, but that was not
e next day. My diary shows it. I have it right here. I
ked to you on the 25th of August, 1939. The diary
shows that on the 26th of August I talked to the City
9 National and also to you. Now, on the morning of the
27th I was at the City National. An appointment was
t made with you.

Thereupon, court trustee rested with the reservation
at they could put in evidence on the petition filed by the
ustee later.

A. J. SCHANFARBER, called as a witness of City National Bank and Trust to testify:

Direct Examination by Mr. O'Brien.

I am an attorney at law duly licensed to practice in the State of Illinois and before this court. I was general counsel in New York for Albert Pick & Company for about three or four years. I was general counsel in 1932 at the end of which year, or the early part of 1933, the company went into receivership. I then became associated with the International & Industrial Securities Corporation as counsel. A claim of Albert Pick & Company had been assigned as security to International & Industrial Securities Corporation for moneys that it had advanced to Albert Pick & Company. In the course of my duties I became familiar with the litigation conducted in Cook County by and between International & Industrial Securities Corporation and Central Republic Trust Company relating to Granada Hotel. Albert Pick & Company had supplied a great quantity of the furniture, furnishings and fixtures for that hotel at the time the hotel was built back in 1924 and took a chattel mortgage to secure
800 the purchase price of those furnishings and furniture.

Our local counsel were Ringer, Wilhartz & Hirsch. The Picks foreclosed that chattel mortgage and bought in at the foreclosure sale the equipment covered by the mortgage with the exception of certain property, reference to which the contention was made that they were fixtures. Picks then applied to the Superior Court of Cook County in the foreclosure proceedings for leave to take out the property so purchased at the Master's Sale. Judge Gentzel allowed us to take out loose equipment but reserved jurisdiction to determine whether the china cases, kitchen cases, in-a-door beds, carpets and ozite were part of the building and the real estate mortgage security, or were property under this purchase at the Master's Sale. Later Judge Gentzel determined that these items belonged to International & Industrial Securities Corporation and the petition of Central Republic Bank and Trust Company, as Trustee, for certiorari was denied by the Supreme Court. Prior to that time we had some litigation in the United States District Court for the Northern District of Illinois. That was a suit brought

by Elof Wenstrand against Albert Pick & Company. I think that was an injunction proceeding. We were successful in this court and afterward the petition for certiorari was denied by the United States Supreme Court. I am not familiar with everything that took place in the proceeding. I know there was a temporary restraining order granted that was later dissolved and then there was an appeal taken and then, if I am not mistaken, there
801 were surety bonds put up in both proceedings to the extent, I think, of $40,000 or $45,000. After you lost that State court litigation, you made an effort to acquire from International & Industrial Securities Corporation the so-called fixture items. I met you in Ringer, Wilhartz & Hirsch's office sometime during 1932. I was here from New York for the purpose of discussing this matter and another matter we had here. At that time, there was pending in the Federal court litigation the suggestion of damages against the surety company. I was counsel for the company and had to have approval of any settlement or adjustment of this matter, but they generally followed my recommendations.

During our first discussion I was not willing to sell these fixture items to the State court receiver. I think I told you at that time that we wanted to settle all the litigation at one time—that we would not settle one without the other. I gave you a figure, I think, of approximately $50,000 to settle the entire litigation.

(Thereupon there was marked for identification as City National's Exhibit A a letter written by Mr. Sidney J. Wolfe of Ringer, Wilhartz & Hirsch, to Mr. O'Brien.)

City National's Exhibit A for identification bears the genuine signature and handwriting of Mr. Wolfe. The figure there set forth refreshes my recollection as to the exact amount of the offer. It was $51,531. $18,000
802 was the price I then put upon the building equipment in the Granada.

(Thereupon certain documents were marked as a group City National's Exhibit B for identification and Exhibit C for identification.)

City National's Exhibit C for identification is a copy of the specifications for in-a-door beds, china and kitchen cases at the Granada Hotel. Those kitchen cases and china cases were delivered to the hotel knocked down. Specifications in respect to the wooden paneling to which the in-a-door beds were attached was requiring a special designed paneling to fit this particular bed. There was

and is no other in-a-door bed manufactured that I know of that would fit that paneling and the hardware. There may have been some, but I know that this paneling and these openings were fabricated and put in especially for this bed. The opening for the service door into the kitchen cases is all set out in the original plans, if I am not mistaken, and we built the equipment to fit in with those plans. There is a refrigeration unit in those kitchen cases which is connected up with the central system from pipes extending through the corridor walls, if I remember correctly. The upper portion of the cabinet has no back to it. The back of the service door is the back of the cabinet. It passes in milk and other items. The in-a-door beds were patented articles made by the White Door Bed Company, a wholly owned subsidiary of Albert Pick. The kitchen cases were specially built by the White people. No other manufacturer made these same beds or kitchen cases. There were similar items on the market but
803 not the same. There were in-a-door beds but not others that would fit this paneling. At the time you concluded this settlement with me the White Door Bed were not in business. At the time the settlement was made you could not buy this cabinet in stock anywhere that I know of.

City National's Exhibit D appears to be a group of invoices from Albert Pick & Company covering the kitchen and china cases and in-a-door beds sold to Granada.

Thereupon, the witness was asked as to the total cost for the in-a-door beds in the year 1924 to which Mr. Woods made objection and it was sustained.

Mr. O'Brien stated that he desired to show the sale price and market value of the items at that time and then show the depreciation from the sale price. Exception was taken to the court's ruling.

"Mr. O'Brien: Do you know what that type of bed was worth—what was the fair cash value of that type of bed, installed in hotel apartments of this kind, in the year 1933?

"Mr. Woods: If the Court please, I object to that.

"The Court: No. That is not the question. The question here, as I see it, is what that stuff is worth to anybody that would take it out. Now that is what it is worth.

"Mr. O'Brien: Well, is the Court so ruling?

804 "The Court: I so rule. I so ruled the other day, otherwise I wouldn't have let the testimony go in.

"Mr. O'Brien: Your Honor, I offer to show by this witness the value of the items purchased from his client.

"The Court: Oh, I hardly think Mr. Schanfarber will hold himself out as an expert on values of hotel equipment. Do you think he would?

"Mr. O'Brien: Well, there has been no objection made on that score yet. I am trying to take one at a time. There is no doubt in my mind but what he is.

"The Court: Maybe he is. I don't know.

(Witness resuming.)

"Mr. O'Brien: Well, I think maybe I can show it.

"Q. Were you, during the year 1933, familiar with the fair market price of in-a-door beds, kitchen cases, china cases and carpeting of the kind that was then in the Granada Hotel?

"The Court: Second-hand.

"Mr. O'Brien: Well, we will take it new, first.

"The Court: I am not interested in new.

"Mr. O'Brien: I am merely trying to qualify the witness and offer it for that purpose.

"The Court: What we are interested in is what this stuff was worth—it had been used for years—what was it worth taken out. If he knows, he can tell us that.

805 "Mr. O'Brien: I am not offering to show your Honor what it was worth at that time. I have not come to that yet. I am now qualifying the witness.

"The Court: Are you objecting? If you don't object—

"Mr. Woods: I am not objecting to his qualifying the witness.

"The Court: I have no objection to qualifying the witness on any relevant question. If it is an irrelevant question, we don't want to spend time on it.

(Witness resuming.) From my connections with this company in the year 1933, and prior years, I became familiar with the fair, reasonable and customary market prices of the items which I had described in Chicago, Illinois, and throughout the United States. I had to do with, I would say, five hundred hotels that were furnished in this way. I handled my company's end of the reorganization of the Book-Cadillac in Detroit and many other hotels throughout the United States.

From my experience, I would say that the fair market value of these White in-a-door beds in Chicago in the

year 1933 f.o.b. the premises installed would be between $40.00 and $50.00 a bed.

"The Court: You mean you would be willing to pay for these beds after they have been torn out forty or fifty dollars apiece?

"The Witness: No, sir.

"The Court: What do you mean?

"The Witness: I mean the fair market value of those beds now, installed, was between forty and fifty dollars a bed.

806 "The Court: What would you have been willing to have paid for them after they had been used that number of years and been torn out?

"The Witness: Out of the property?

"The Court: Yes.

"The Witness: Very, very little.

"The Court: They were junk.

"The Witness: We wouldn't have had any place for the beds, nor would we have had any place for the cabinets, nor the ice boxes—but in the property I would say they were worth considerable money.

"The Court: Replacement new less depreciation.

"The Witness: Yes, Judge, replacement would cost them pretty near as much as the original cost.

"Mr. O'Brien: Q. What do you think they were worth as they stood, as depreciated?

"Mr. Woods: We object to that.

"The Court: Sustained.

(Witness resuming.) I think you told me that there was approximately 6,000 yards of carpeting and ozite in the building in 1933 that was purchased in the summer of 1924. Assuming that it cost $25,000, in my opinion it is worth, in 1933 in the building—

"Mr. Woods: We object to that.

"The Court: Sustained."

The trustee-in-possession of that carpet and ozite, and those cabinets and those beds—from a person, firm or corporation—

"Mr. O'Brien: Except for one thing. The trustee-in-possession did not buy them.

807 "The Court: He took the money out of the estate.

"Mr. O'Brien: Not that I know of.

"The Court: They seem to be trying to get the money now.

"Mr. O'Brien: That is not the record here, your Honor. The record is that the State Court receiver bought them.

"The Court: The State Court receiver bought them from a person, firm or corporation that had a right to take them out of the building.

"Mr. O'Brien: That is right.

"The Court: The question is, what was the right to take them out worth? It was worth what the junk was worth.

"Mr. O'Brien: The State Court did not look at the problem in that way, your Honor. The question from the standpoint of the bondholders was, what was it worth to keep them in, and that depended on their value in there. It was the replacement value less depreciation.

"The Court: Oh—

Thereupon, Mr. O'Brien offered to show by the witness what the carpets, ozite, in-a-door beds, china and kitchen cases were worth in the year 1933 in Chicago, Illinois, installed in the Granada Apartments.

"The Court: Is there any objection?

"Mr. Woods: We object to that testimony.

"The Court: Sustained.

(Witness resuming.) I finally agreed to take $22,500 for those items. You told me you did not have the
808 money but that you thought that perhaps you could get the surety company to put up some money in connection with the matter. We had considerable discussion as to the measure and extent of the liability of the surety company on the bond which had been furnished in that Wenstrand litigation. You called my attention to the fact that subsequent to the time that Judge Wilkerson dissolved the injunction order there was no order entered in the proceeding reinstating the injunction pending the appeal. It was your contention that pending that appeal we were not restrained and could have taken our stuff out at any time. You submitted some authorities to me that convinced me that the basis of recovery, if there could be a recovery on those bonds, would not run into a lot of money.

You told me that the provision for the payment of attorneys' fees in the new bonds were in violation of the statutes of the United States, providing what the condition of an injunction bond should be and that there was surplusage and could not be enforced. Ringer, Wilhartz & Hirsch, our attorneys, asked $10,000 attorneys' fees as a reasonable value of their services in connection with this suggestion of damages. I spent a lot of time on the law after I discussed it with you and there was

considerable doubt in my mind as to whether or not the new bond that had been furnished had acted as a supersedeas which had prevented us from removing the property. After that I made you a proposition that we
809 would take $22,500 for the equipment. I did not think you could replace this equipment for a cost of less than $20,000 to $25,000. I knew the problems you would be up against if you took it out. I knew you would have to replace and I knew that there would be some loss of rentals and inconvenience to your tenants. In none of the 500 hotels in similar circumstances that I participated in were we permitted to take this type of equipment out. We have taken equipment out of smaller spots, but on an item like this, I don't think we removed the equipment twice in my experience. Either the trustee under the mortgage or the receiver or the owner in possession always worked out some deal with us.

Met pursuant to adjournment October 7, 1937.

Present:

Mr. Woods,
Mr. Rosenstone,
Mr. O'Brien.

A. J. SCHANFARBER resumed the stand;

Cross-Examination by Mr. Rosenstone.

I am practicing law in Chicago and was doing so in 1933, and in that year was not engaged in any other business. I was acting as counsel for Pick & Company at the time they made this sale to Granada Hotel. I was not acting as general counsel at that time. That was back in 1924. I represented Albert Pick & Company from about 1918 to 1934. I went to New York in 1929 to represent them as general counsel and was there until
810 1932, then came back to Chicago, where I have been since. I was never engaged in the manufacture or sale of carpets or things of that sort, and had nothing to do with that while with Pick & Company except that I passed on all large-sized contracts for large installations. I have not made any examination of the carpets, ozite and in-a-door beds and kitchen and china cabinets in the Granada Hotel since this matter was adjusted. I had an examination made there at the end of 1931, or the early part of 1932. I don't think I examined it per-

sonally. I do not know the present condition of those articles. I know about the condition of them in 1933. I had a complete report of the condition of the equipment before we made the adjustment.

Ozite is a hair felt that is put under carpets as padding and is fastened to the floor by sort of a glue, but it is easily removed. It can be used on a cement floor glued on. I don't know whether this particular ozite is cemented to a wooden or cement floor. It wouldn't make any difference. There isn't much difference in the value new or after it is used seven or eight years except that it may need a little filling in in spots. It may be removed so that it is usable very easily. You can remove it with your hands. It will leave some of the hairs off the ozite but not enough to make any particular difference. I am not positive, but I think there were approximately 6,000 yards of carpet described in the bill of sale from International & Industrial Securities Corporation to the Central Republic Trust Company dated August 18, 1933, and 811 about the same amount of ozite.

I think there were between 150 and 160 in-a-door beds and the same number of kitchen cabinets and about the same number of china cabinets. I don't know whether they are still in the Granada Building or not.

The replacement value is the approximate cost of putting the equivalent of something back in its place. It has no reference whatsoever to the value of the article that is taken out. It is the particular use that the article is used for and what it would cost to put something in the place of that article. What it is worth taken out has no basis in the figure at all. The valuations I gave yesterday were what, in my opinion, it would cost to replace the goods and property with new goods of a similar nature and character.

I would not say that the value of that property taken out in 1933 is worth over $3,000 or $4,000. The ozite lining would be worth about fifty or sixty cents a yard. The carpet would only have a second-hand value and the in-a-door beds would be worth, if any, not over $5.00 or $10.00 apiece.

The kitchen cabinets out would be worth nothing. You might be able to get $400 or $500 for the 6,000 yards of carpet, and for the ozite about fifty or sixty cents a yard. The value of the articles removed might run from $1,000 to $1,200 over or under the figure I gave but so

812 far as their value compared with the cost or value of the property in there it would be nil.

Referring to Trustee's Exhibit O-3 (the report made by Mr. Lenz as to the valuation of those articles in 1933 taken out) I would agree with his figures except as to the ozite on which he has a value of $100. I would put a value on it of at least $2,000. The fact that the ozite is glued down to a rough concrete floor would not make much difference in my valuation. I would say that the fact that it had been used for a number of years would depreciate the value about 50% of its original cost. After ozite has been taken up it can be reused. Fitting in places that may need filling in is not anything that has to be according to specified sizes. It does not have to be remade in order to be usable. You can fill it in in certain spots where the hair might happen to be thin. That is about all. Personally, I don't think that there would be any market at all for the kitchen, china cabinets or in-a-door beds if they were out of there. His price is about $1,400 on those things, but you may have been able to sell them to some second-hand man or something. In the aggregate, there isn't much difference in my estimate if that were taken out.

Redirect Examination by Mr. O'Brien.

As a rule Albert Pick & Company took chattel mortgages or conditional sales contracts to secure unpaid bal-
ances depending on the State it is in. We had to pull
813 out the furniture and equipment in very few cases.

I don't think that this property would have any resale value, or very, very little outside of the oziting. The same is true of similar equipment in any large hotel. It would take a lot of labor to remove those items.

The kitchen cases of the type in the Granada last as long as the building lasts. China cases, outside of the broken glass, and refinishing and painting; last as long as the property lasts and so will the in-a-door beds. There would be a difference in value, in my opinion, if you assumed that the items were to stay in place in the hotel. That is the way I figured it when I made my adjustment with you—that is, on the value of the property in place and the replacement cost if you wanted to put in equipment of a similar type.

"Q. On that basis, what is your opinion as to the value?

"Mr. Woods: I object to that, your Honor.
"The Court: Sustained.
"Mr. Woods: It is the wrong measure of damages.
"Mr. O'Brien: I am not sure I have got it clear in the record, and I therefore should like again to offer to prove through this witness, that the value of the in-a-door beds, china cases, kitchen cases, Ozite and carpet in the Granada Hotel during the year 1933, in place in that hotel in its then condition, was at least $20,000; I make that offer to prove that through this witness.
"The Court: Any objection?
"Mr. Woods: Yes, we object.
"The Court: Sustained.
"Mr. O'Brien: Exception."

JOSEPH K. BRITTAIN, called as a witness in behalf of City National Bank and Trust Company:

Direct Examination by Mr. O'Brien.

I live in Chicago and am in the real estate business. I have been for over forty years and practically all of that time in and around Chicago. I am a member of the Chicago Real Estate Board and was its president in 1926. I was a charter member of the Illinois Association of Real Estate Boards and acted as their President in 1920, also of the National Association of Real Estate Boards and I have held offices on the Executive Committee and as Treasurer at one time for four or five years. In 1930 I was appointed on Governor Emerson's Tax Conference and was chairman of the Executive Committee at that conference. I have also acted as Stock Trustee and Trust Manager in respect to various reorganized parcels of real estate in Chicago. I do a general real estate business and of late have been called in on many appraisals.

I manage properties; represent clients in their real estate matters; have operated quite extensively on my
815 own in building and subdividing. Within the last five years I have been in a position to act as a member of a bondholders' committee, which has brought me into contact with a good many buildings. I personally checked those buildings and their operation. I visted the Granada Hotel at your request. I went through the lobby space at the hotel and ascertained in a general way the nature of

the improvement on the property. I made inquiry about the number of units and apartments in the building. I also gave some attention to the condition of the surrounding neighborhood.

Trustee's Exhibit C substantially represents the set up of the lobby space and floor plan. I would say that the lobby space is more than normal and more commodious than really necessary. I would say that as the space now stands the building is not designed for shops or for a dining room or a tearoom. If shops or a dining room or a tea room were to be installed it would be necessary to remodel to accommodate them. There would be some expense involved there. You would have to remodel it for any commercial purpose. The ballroom space might be remodeled to accomodate a tea room or a dining room.

To the rear of the ballroom space I found a small room that is being used for kitchenette or kitchen purposes. I would call it a service kitchen. I do not think it would be adequate to service a dining room if one were occupying this space. It is not large enough. It would have
816 to be considerably remodeled and probably enlarged.

If that space were to be remodeled and rented for that use it would be necessary that the tenant provide equipment to operate it. They would have to prepare the kitchen for the necessary operation of a tea room and, of course, have their tables and chairs and cashier's quarters and the usual equipment that goes into a restaurant or tea room. To adequately equip a restaurant or tea room in this space it would cost a number of thousands of dollars. I made no investigation as to what the exact cost might be. It is an expensive operation. The apartments in the building are kitchenette. Arlington Place is zoned for apartment hotels and the property west of Clark Street on Arlington Place is occupied by apartment hotels and rooming houses and some residences. I would classify the general neighborhood as of mixed character.

The Granada and the one across the street and the one somewhat west, which I happen to be interested in as a bondholders' committee, are pretty fair buildings. Some of the other buildings in the immediate neighborhood are old. Some obsolescent property. The only business center there is Clark Street, which is zoned for business. Arlington Place, as I remember, terminates about Clark Street. There are business houses scattered along Clark Street. The Granada is, I imagine, about 250 or 300 feet away

from Clark Street on Arlington Place. The traffic there is about normal traffic that you find on any street of
817 that type occupied by apartment buildings.

I am not at this time operating any hotel properties directly. The most recent experience I have had with a hotel property is that I was President of the corporation on the reorganization plan of the Rogers Park Apartment Building, which is on Sheridan Road and Pratt Boulevard. It is a well populated community. There is considerably more traffic on Sheridan Road and Pratt Boulevard than on Arlington Place. Arlington Place is just a quiet side street. At the Rogers Park Hotel they had a dining room space provided as a part of the original design.

My experience with Rogers Park Hotel extends over several years. It is an apartment hotel with kitchenettes, some 341 units, as I remember. It is zoned for commercial purposes and there are some five stores in the building. The stores and restaurant open on to the street. There is no restaurant open there now. It has been closed. When I took over that building we had a tenant in the dining room paying about $115 a month rent, struggling along and that engaged in a side issue of canning food, which became objectionable to us and we had to let them out. They couldn't make a go of it in the restaurant. We leased it to another tenant and they found it difficult to pay their rent and they dropped out of the picture. There was another tenant that followed them and they found it difficult to get along and they dropped out. The space is now vacant.

818 That condition is general and not confined to the Rogers Park Hotel. In the operation of hotel properties, especially kitchenette properties and, in fact, most any hotel, it is a struggle, except in the loop, and I think they are having difficulty to make the dining rooms pay.

If I had had control of the Granada property during the last five years, I would not undertake to find a tenant for the ballroom space as a dining room or a tea room. If I had an actual application for a tenant, I would hesitate to make the lease. You might find a tenant who would be optimistic enough to think they could go in there and equip that space for a tea room and draw in enough patronage to make it pay. I would feel that if I accepted a tenant like that I would be inviting trouble. They would soon be dissatisfied. I have no idea they could make a go of it. Such buildings as that that are attempting to have food

served in them have been having this experience: they lease out these rooms for restaurants, and the tenants fail; even where the management offers rent free, and heat and light, the tenant makes a failure of it. I have a client who has a hotel on the south side of some two hundred units similar to this one. They have been meeting with defeat in trying to maintain a dining room without loss and they are running it at a loss now although they operate it themselves. You have to have a good many people coming
819 and going in a restaurant to make it pay—especially in these times, with the high cost of provisions. I would not undertake to lease it. I would anticipate the disappointment of the tenant and disappointment of the management if you leased that as a tea room. I made quite a study of it. I stayed there quite a while and studied the lay-out of the building and the surroundings and I do not see that there is much opportunity to do any better in that building than you are doing today.

The ballroom is being used now for part of the year. The manager told me that some Women's Club brings in several hundred dollars and that there is an occasional dance there that brings in $40 on occasions at night. If that is permitted to prevail, I think it is about the best service that the room can probably render to the building. I would be very careful in managing that building not to permit anything that might be objectionable to the morale of the property. I don't think the Club there is any objection. I would not have a bar in that space. It would make more revenue, but completely change the character of your tenancy, which would be undesirable. There is a very good class of tenants there from what I learned by inquiry. Some of them are in good circumstances,—some in very good circumstances, some of them in moderate circumstances. They seemed to be contented. They are a very good type of tenancy for that class of building and the character of the building can be maintained as it is.
820 The ballroom space, solarium and writing room are very attractive. The building could get along without the solarium, but it is a very attractive feature and no doubt of great value to the tenants. They use the so-called writing room for a ping pong table and they have a library there. The building is so constructed, as many hotels are, that there is more space in the lobby than is really necessary but the architectural design of the building and its construction has that space and it is desirable for the

tenancy and should be protected against any undesirable occupancy to keep the tone of the building up.

I talked to Mr. Parker in the manager's office. The manager's office is not excessive as to size but is about right in relation to the size and design and appointments of the rest of the structure.

There is adequate room there for a stationery room. Public space in the building is more commodious than a building of that size needs, but it is there. It is the first floor space which is not suitable for converting into rooms. The way it is laid out is very fine and it is impressive as you enter the building but if I owned the building I would not commercialize any of this public space. I cannot see how you could make any money out of it except for the use it is being put to today. It is not making much money but it helps to heat and light the space. The income from the ballroom helps to heat and light the ballroom itself, not the building as a whole. As far as I can see, it is absolutely useless except for the purpose it is now devoted to. I cannot see that it can be used to a better advantage. You might lease it and have some discontented tenants in there in no time. I cannot see any commercial value except for the hotel's benefit. This present space, even if it is excessive has value to the hotel in the way of increased revenues from the rooms. It gives the tenants an opportunity to come down in the lobby and solarium for their rest and recreation. It has an appeal as you enter the building which I think adds value to the building generally.

821

I would not disturb the manager's office. It is not more elaborate in proportion to the building than any other manager's office in the different hotels. The manager needs about that space. I am talking about the 11 by 22 feet that the manager occupies.

As to the stationery room. I don't know how much stationery they have there. They have a vault there. I should think that is adequate for stationery. There is an auditor's room. I talked over with Mr. Parker whether the auditor's room would be ample for him. He said if he had to take it for that purpose, he could do it. I don't know what use you could put the manager's office to and make it pay anything.

The ballroom ceiling is probably ten feet high. I have no idea how high the office manager's ceiling is. It didn't

impress me as anything over the usual height for an office room.

822 "Mr. Woods: If the Court wishes to know, the ceiling in the directors' room is about 12 feet high, and in the ballroom, I should say it was about 18 feet high. The first floor of the hotel, the lobby floor, is on three levels, and that extra heighth goes into the ballroom."

The basement is cut down for the ballroom.

Cross-Examination (Mr. Brittain) by Mr. Rosenstone.

I have a general real estate business and operate generally throughout the City. For a good many years most of my operations have been in south side properties. I have not been a hotel manager. I have been a real estate manager. I have never operated a restaurant. As a real estate operator I have had a renting business for years and have rented apartments in and out of hotels. I have not been in the renting business for the past ten years. I am not connected in any way with the City National Bank and Trust Company. I am on a Lackner & Butz Protective Committee but not one that the City National Bank is interested in that I know of. In serving on that committee I have not had charge or general management directly of any hotel. I have guided the management and advised them.

If the ballroom were used for a tea room or a dining room customers could enter it immediately from the lobby of the hotel. I do not think that the stage that is in the room would interfere in any way with the operating of a tea room.

823 Whether or not the kitchen at the rear of the ballroom marked on this map "Serving Kitchen" would be sufficiently large to serve the ballroom for a tea room or restaurant purposes would depend on how much trade you had. If you did the maximum amount of trade that the sized room would accommodate you might get along but it would be a great deal better if it was larger. I think the serving kitchen as it is now could be very easily enlarged by extending the room to include what is called the auditor's room on this plat. It would not entail a great deal of expense. It would possible to put in a dumb waiter from the serving kitchen to the basement. I didn't go in the basement but presume it is of normal height there. Whether it would entail more than an opening through the floor, I don't know. I am not an expert contractor.

I have had a lot to do with making alterations in buildings and find I am disappointed in the cost over and above what I anticipated in the beginning. Alterations are expensive work. I don't know how many people could be accommodated in the ballroom if it were arranged for a tea room. I didn't measure the room for that purpose. I don't know of any similar building on that street that has a tea room or dining room that has no direct access to the street.

I am familiar in a general way with the territory that runs from Clark Street west to Orchard Street and from Wrightwood to Belden Avenue. It is a thickly settled district and with a lot of very fine homes and apartment
824 buildings, fire proof and semi-fire proof. There are a good many churches. It is one of the thickly populated districts of Chicago. It is one of the older residential districts.

I am not very well acquainted with the Belland Apartments Hotel at 2256 Cleveland. I am not very familiar with the Lincoln Park West, Belden-Stratford, the Webster and the Parkway Hotel.

There is a building on Arlington Place that I visited a week ago which is on the north side of the street and west of the Arlington. It is one of the Lackner Butz buildings that we have charge of. It doesn't have a restaurant or tea room.

The writing room across the lobby from the ballroom is about ten by fifteen feet. It may be larger than that (witness examines plat). It is seventeen by twenty-seven feet. It is difficult to answer whether it is possible to use those rooms for any other purpose than what they are used for now. They are large enough so that you could put a small store in there for magazines and things of that kind. It would be possible to use those two rooms for stores of that character; the space is there. If you rented them you would receive mighty little revenue. It is true that if those rooms were used for commercial purposes it would not be detrimental to the hotel, provided, of course, that it is a business that would be of no objection to the character of the hotel as it is rented today.

825 I do not think the stores in the Palmer House on State Street to Wabash Avenue detract from the popularity of that hotel. They have shoe stores, haberdashery and women's wear and things of that sort. They are very accessible to State Street which is a great business thor-

oughfare. Arlington Avenue is far different from State Street when it comes to merchandising. I would say the Palmer house stores are more accessible than they would be in the Granada where you go through a door leading into a narrow corridor and walk up some steps. It is true that in any of the large hotels throughout the City they have stores right off the lobby. They charge rent for them. I think there are a great many factors that enter into the financial difficulties of these apartment building. I think if they rented the floor space for commercial purposes it would be for very small consideration. I know what happened to the southwest corner of the LaSalle Hotel. I advised the hotel when they were building that hotel to put stores in there. They took my advice too late.

I was told by Mr. Parker that the ballroom in the Granada is used occasionally for parties and dances. If the ballroom were rented to a tenant for a tea room the tenant could still use the tea room for parties and dances. I would not give the tenant the privilege of carrying on dances in the ballroom.

If an attempt were made to rent the writing room and solarium I haven't any idea what rent should be paid.

826 If the ballroom were rented for a tea room or dining room rental should be a couple of hundred dollars a month. I don't think it would be possible to rent it for $200 a month. If I owned that building with $40,000 or $50,000 of taxes against it, I cannot see how I could get revenue for the ballroom. The apartments of 114 units would be the uppermost in my mind. I acknowledge there is space there that is unnecessarily large, but what to do with it to make it pay I cannot see unless you put a bar in there and change the entire complexion of your building. If I were the owner I would endeavor to get more rent out of my apartments and try to do what I could with the ballroom and be safe. I can't figure out what could be done with it.

If I were on the verge of losing the building because I could not pay the taxes I would not depend upon the ballroom helping me very much in paying $1500 in taxes. An owner or manager of a piece of property like this has to be alert to the changing conditions and it is true that because that ballroom was put in there ten or fifteen years ago does not mean that an effort should not be made by the present owner to get some revenue out of it. It would not surprise me to learn that the present trustee has had numerous inquiries from people who want to put a tea room in that space. I don't believe it could be used for

that purpose. You might rent it but you would be disappointed before you got through. That is my best judgment.

827 Thereupon, there was introduced in evidence as City National Exhibits D and E respectively certified copies of the injunction bonds in the Federal Court Pick furniture litigation.

Thereupon Mr. O'Brien offered in evidence CITY NATIONAL EXHIBIT C for identification, being specifications dated May 27, 1924, relating to the original purchase of the furniture items.

"The Court: The specifications aside from the prices may be received. Objections to prices, if made, will be sustained.

The specifications other than prices will be received. Objections to the prices if made will be sustained.

Are they made?

"Mr. Woods: Yes, sir, the objection is made.

"The Court: Objection sustained, to prices.

"Mr. O'Brien: Exception to the Court's ruling."

Thereupon, there was offered in evidence CITY NATIONAL EXHIBIT B for identification, being the invoices relating to the same items:

"The Court: Any objection?

"Mr. Woods: Same objection.

"The Court: Sustained.

"Mr. Woods: To that, your Honor.

"The Court: Sustained.

"Mr. Woods: They relate only to prices.

"Mr. O'Brien: Exception."

Thereupon, there was offered and received in evidence as CITY NATIONAL'S EXHIBIT F copy of war-

828 ranty deed from Granada Hotel Corporation to Granada Apartments, Inc., dated April 29, 1929.

Thereupon, Mr. O'Brien offered in evidence the transcript of initial proceedings had before the court on this case on May 15, 1937, to show that neither City National or Committee, nor its counsel had any objections to the approval of the petitions which were approved and for the purpose of showing who did oppose the approval of the petitions and in relation to the point made by the Court Trustee that City National interposed the same objections here as it did in the old bankruptcy proceedings.

"The Court: Here is the impression I have had about your client: Your client wanted to maintain possession of that property, and objected to surrendering possession to

this Court; and not until the question as to the right of this Court to take possession was to be put to a test did your client surrender possession. Now that arouses in the mind of the Court the wonder as to why your client wanted to retain possession.

"The Court knows that in this city it was practically impossible to get a trustee under a mortgage to take possession of a piece of property on which it held a mortgage for the security of the bondholders, until the time came when somebody thought that if they could get a trustee in possession they could oust the District Court of the United States of jurisdiction in a 77B proceeding.

"Then Trustees began to take possession, and not until then.

"And then when this case comes in here, I see an
829 effort on the part of your client to continue to take possession, and then the Court begins to wonder why, what is there in this case that this Trustee should want to keep other people out of it? That is the reason we are spending a great deal of time.

"Now, I do not think your client did object to the approval of the petitions in this case, but your client did object to giving up possession, and that all has aroused in the Court's mind the question why a mere trustee should want to insist upon possession. Why? And if we have to spend a lot of time to find out, I am entirely willing to do it.

"If you think there is anything in there that will benefit your client, so far as the Court is concerned it is all right.

"Any objection?"

Thereupon the transcript of the proceedings was received in evidence as CITY NATIONAL'S EXHIBIT G the court at the same time putting in as evidence the transcript of the proceedings held May 17 wherein the court stated its reasons why it wouldn't allow City National to stay in possession and why he would take jurisdiction.

Thereupon, there was offered and received in evidence the CITY NATIONAL EXHIBITS H AND L photographs of the kitchen and china cases in the Granada Hotel.

Thereupon, there was offered and received in evi-
830 dence CITY NATIONAL'S EXHIBIT J photostatic copy of the original Trust Deed of Granada Apartments.

Thereupon, there was offered and received in evidence as CITY NATIONAL EXHIBIT K a fair copy of the chat-

tel mortgage of Granada Apartments, Inc. to Central Republic Trust Company.

Thereupon, there was offered and received in evidence CITY NATIONAL EXHIBIT L, the chattel mortgage notes.

Thereupon, there was offered and received in evidence CITY NATIONAL'S EXHIBIT M, the assignment of the chattel mortgage and notes by Central Republic Trust to City National.

Thereupon, there was offered and received in evidence, CITY NATIONAL'S EXHIBIT N, a fair copy of the decree of sale entered December 18, 1936, by the Superior Court.

There was offered and received in evidence as CITY NATIONAL'S EXHIBIT O, a copy of the petition of Central Republic Trust Company filed in the foreclosure proceedings for the issuance of the receiver's certificate of indebtedness.

There was offered and received in evidence CITY NATIONAL'S EXHIBIT P, the file copy of the order entered on the prayer of the aforesaid petition.

There was offered and received in evidence CITY NATIONAL'S EXHIBIT P file copy of the order amending the order evidenced by Exhibit P.

There was offered and received in evidence CITY NATIONAL'S EXHIBIT R file copy of order directing
831 the surrender of possession by the Chicago Title and Trust Company, as receiver, to Central Republic as Trustee.

Thereupon, there was offered and received in evidence, as CITY NATIONAL'S EXHIBIT S a certified copy of the order of the Superior Court taxing the fees of Robert C. O'Connell, Master in Chancery.

Thereupon, there was offered and received in evidence the CITY NATIONAL'S EXHIBIT T, a collection of instruments consisting of the order of the State Court approving the account of the Central Republic Trust Company, including also the final account and report of William L. O'Connell, as receiver of Central Republic Trust Company and appended exhibits or photostats of those documents.

Thereupon, there was offered and received in evidence as CITY NATIONAL'S EXHIBIT V that portion of the transcript of record in the United States Circuit Court of

Appeals, case No. 5488, as includes the formal opinion of his Honor, Walter Lindley.

Met pursuant to adjournment October 7, 1937, 2 o'clock P. M.

Present:

Mr. O'Brien.
Mr. Rosenstone.
Mr. Woods.

JOSEPH I. McDONNELL, called as a witness on behalf of City National Bank and Trust Company and was duly sworn and testified:

832 *Direct Examination by Mr. O'Brien.*

I live in Chicago and am General Manager of Hotel Windemere, located at 56th Street and Hyde Park Boulevard and have been since October, 1936. I have been engaged in the hotel business since January, 1919. In St. Louis at the Hotel Statler, and since that time I have operated as General Manager of the Chase and Coronado Hotels in St. Louis and the Evanston Hotel in Evanston, Knickerbocker Hotel in Chicago and the Chicago Beach Hotel in Chicago. In all of these properties I have operated the restaurants and catering departments. Some of those hotels also rented space for shops or other commercial purposes. In all of those properties we operated the dining rooms directly except at the present time where in the Windemere West we have leased the dining room. In every case, the hotel was built designed and equipped with dining room space. During all of that period I was familiar with the cost of food and provisions as used in the restaurant and dining room business, and also with labor costs.

I have purchased kitchen equipment and dining room equipment over a number of years.

I visited Granada Hotel premises yesterday afternoon to inspect the lobby floor and space with the idea of testifying here. In Court Trustee's Exhibit C I recognize the plan of the public space, the lobby ballroom, and so on. I don't know anything about the rooms because I didn't go beyond the entrance area. I saw Mr. Parker there
833 yesterday. The lobby space is an unusually large amount of public space for a building with that num-

ber of units which, I understand, are approximately 118 or thereabouts. My understanding from information I obtained from Mr. Parker yesterday is that the majority of the units are rented furnished. They consist of apartments with pullman kitchenettes, in-a-door beds—also apartments with bedrooms, dinettes and kitchens. That of the total number of units about 18 are hotel rooms and the balance are definitely equipped with cooking facilities of some type.

To obtain auxiliary income from space that is not consistently used is always a desirable objective but one very difficult to attain. In the caes of the Granada Hotel the space might feasibly or possibly be used for various purposes but there is a definite element of risk in converting this space to such commercial use without first having determined some specific tenant or some specific purpose to lease the converted area. It has been suggested that it be employed as a tea room or restaurant, but my experience convinces me that unless such a restaurant or tea room was operated by a person with an existing reputation and with an established following considerable difficulty would be experienced in pioneering such a venture in that particular location.

I drove around the neighborhood after I visited the hotel to more or less familiarize myself with its environ-
834 ment. I would say that the clientele of the Granada Hotel is rather substantial, respectable class of people. From the structure of the hotel I would say that they are people of moderate means and use their kitchen for cooking purposes rather extensively. I think the other buildings in the neighborhood are the same type. Whether that particular neighborhood would yield a large or smaller volume of that type of business, I am not prepared to say. I would personally regard a restaurant investment in that location as a hazardous enterprise.

If I were in the restaurant business I would not be willing to lease the space in this building for a restaurant. Very few restaurants in hotels where the service is limited to one meal a day, dinner, when your house population is most available, have proven successful.

The Windemere West is an old building. The dining room has been operated by the regular catering department of the hotel for a number of years at a constant loss of approximately $3,600 to $5,000 annually despite occupancy in the hotel of from 75% to a present capacity of 90% over the years. The building is a hotel of some 200 units only five of which are equipped with kitchen facili-

ties. It would appear to be a logical place for the development of a profitable food business. The restaurant, as I have described it has been unsuccessful. We attempted to lease it and we did lease it last fall to a woman who had operated a very succesful tea room known as the "Green Shutter Tea Room" in the vicinity of Chicago Uni-
835 versity. She had an established business of six or seven years duration in close contact with the faculty and student body of the University. We brought her into the Windemere West dining room thinking that her patronage would follow her. Eight per cent of her gross sales were to be paid as rental. She has paid her rent on that basis at a considerable sacrifice to herself up until the first of July and her working capital was gradually extinguished, and since that time she has been operating the restaurant on monies supplied by the hotel to meet the direct expenses with no profit or income to herself and the hotel has realized nothing from the operation of that restaurant since July 1st.

I am led to the conclusion that certain types of locations, such as ours, which have no access from the street—it is off the beaten path of pedestrian traffic and shops, neighborhood gathering points—are fundamentally unsound.

We have to maintain the dining room purely as a service to the residents of Windemere West. We are quite fortunate in breaking even through the contribution of this woman's services, trying to hold onto her lease, the waiving of any rental, and the counsel and advice and assistance from the catering department of the Windemere East.

I think the location of the Granada is a shade worse than the Windemere West from the standpoint of pedestrian traffic and as a center for neighborhood assembly. The successful operation of a restaurant is contingent primarily upon good food and the reputation of the
836 individual for dispensing good food. The residential hotels have notoriously failed to establish a reputation in that field during the last few years.

I examined the ballroom space and the kitchen in the rear. At present time there is no kitchen. It might be described as a serving pantry. There is a small type of gas range in which you might prepare coffee, tea and possibly keep a roast warm, and there is a sink, some storage cabinets for silver, linen and china. It would have to be considerably amplified to do any kind of restaurant or tea room business. It would involve some structural changes.

The basement kitchens are not impractical. I would say they would have to have a closer approach than a dummy waiter—possibly a stairway, or something of that sort. At the Chicago Beach our kitchen was a converted billiard and bowling alley. I am familiar with the City ordinances relating to the special ventilation and lighting required and you would have to provide adequate ventilation to the roof of the building with fusible links on fire dampers in order to comply with the ordinance. We have just installed one in a drug store in Windemere East which does a food business of around $2,400 to $3,000 a month with an average check of about 25¢ per person. There are a considerable number of people served at each meal. But it cost us approximately $1053 for the installation of the ventilating fan and the shaft to the roof out of that particular space.

If we were to utilize the ballroom area completely
837 and expected to serve the capacity of the room at any ordinary meal, I assume that the seating arrangement would accommodate approximately 200 to 250 persons. It would take quite a bit of equipment to service that. I imagine any operator in there would not attempt to operate on that scale. They would probably seek to reduce the area materially, either through the use of partitions or some general revamping of the room itself.

The nature of the equipment would be determined to a considerable extent on the type of restaurant you were going to operate and on who was going to operate it. The room itself does not lend itself, in my judgment, to a tea room service. The entire decorating effect of the room would have to be altered materially. Today it is a formal type of function room, which, if the decorations were left undisturbed, would have to be used as a formal dining room—which would be wholly out of place for that particular building, the location and the opportunity for patronage. Considerable investment would be involved in revamping the room to create the atmosphere of intimacy and informality which seems to be part of the popular price type of dining room which that would have to be in order to obtain any volume of business. The room is equipped with a type of chair which could be converted. I assume they have tables. I haven't investigated that point because the manager informed me they were already doing a small catering business to neighborhood civic and social organizations.

Excluding refrigeration, a kitchen in that location with a battery of two ranges, a broiler, deep fat frier, stock
838 pots, would cost about $1,200 or $1,500 for your ordinary mechanical equipment. Refrigeration and other equipment could easily increase your cost to $3,000 or $4,000 before you get up to the room itself. Ventilation in that building might be a very important item. I cannot answer as to that because I didn't go into it thoroughly. There is an exhaust system of ventilation in the ballroom proper but under the City ordinance general ventilating systems cannot be employed to exhaust the grease-laden fumes from ranges and other cooking areas.

It is very difficult to estimate without a specific plan what it would cost to change the room itself. The lighting scheme and installation of a more typical tea room or restaurant style of decoration on the walls is difficult to estimate without a specific plan but our experience is that it would require a substantial sum of money.

There is no question about the solarium and writing room being ideal for some such usage as a haberdashery, antique shop or millinery shop providing you can seek out just the right tenant. My judgment would be that any investment in the alteration of that space before the tenant has been identified, located and a deal arranged would be hazardous. As a business location, that property does not appeal to me for any general use but it is a known fact that established merchants and people who are
839 already engaged in business and who have a patronage and a following can set up a shop almost anywhere and do business.

When I was at the Chicago Beach Hotel there was a beauty shop on the mezzanine floor highly inaccessible, and it was a definite failure. The tenant was in arrears constantly in rent and we had to force them to vacate. Their inability to maintain suitable standards began to react unfavorably on the hotel.

We were successful in obtaining three young women who were the active figures in a neighborhood beauty shop in a street location, and when they came in they brought their trade right with them. The hotel and the location were immaterial. They could have gone into an attic, into a stable, I think. We converted a beauty shop which had been a distinct failure, and a definite handicap to the hotel, into a very successful item, yielding an average rental of from $150 to $175 per month, whereas before we were unable to get even $50 or $75 a month.

But I don't think the space had anything to do with the success of that department. It was the fact that we were able by good fortune to get three young women who had their own established business and could bring it with them. If such a thing could be done at the Granada, fine. But to prepare that space in a general way without having in mind any certain business or any certain business person, would not be advantageous. I can see where the property could be remodeled if you had someone standing there waiting to take possession of it but any investment
prior to the identification of such a tenant would be
840 a pretty risky thing. If you can move a merchant, or a restauranteur, or a shopkeeper, or a dressmaker, or a beauty shop, which is a going concern, into that location, such an enterprise would continue to be a going concern, regardless of the location. The environment is nice.

You are highly restricted in the types of business that can be introduced in that area. The manager told me there were some restrictions as to street openings for certain types of business.

You cannot put every kind of business into a hotel of that character. You are limited in the class and respectability of the type of shop. While the rents are not very high, the appearance, manner and dress of the people that I saw in the lobby were those of conservative, respectable people who would be disturbed by an enterprise that would be a little bit off-color,—too much noise, too cheap an appearance, too flagrant in any respect.

A person engaged in the restaurant business there would undoubtedly try to develop as domestic a type of food service as possible. There would be no frills or elaborate service. They could not afford it, nor would the price at which the meal could be sold permit it.

While I say that it is a one-meal business, there would be opportunities, perhaps, for group luncheons. They have already been able to secure the Lakeview Women's Club
for a series of meetings and there are probably other
841 opportunities existing for the promotion of that.

But it would all be contingent upon the individual reputation of the person engaged in the operation and that, I think, would be a much more vital factor than whether the Granada Hotel opened a tea room or not. The mere opening of a tea room by a hotel means nothing to the public and if they should undertake it without any previous experience or reputation in the field, it would be a long, painful process developing patronage.

I think it would be a very hazardous thing to put the amount of money required into that. If somebody was adventurous enough to do it, I don't know how quickly they could amortize it. I cannot see any possible, substantial return on operations there. Like in many hotels, if the equipment is already in and it was just rusting and going to pieces, somebody might utilize it.

Cross-Examination by Mr. Rosenstone.

I came to Chicago in 1925 and was away about a year as manager of the Coronado Hotel in St. Louis. I have been operating the Windemere East and West since October 1, 1936. I have not been engaged in real estate business in Chicago and have not acted as broker or agent for the renting of properties in Chicago for restaurant purposes, except the Windemere West—I negotiated that.

It is not necessarily true that most of the larger hotels, when they attempt to run restaurants themselves,
842 operate at a loss. Some of the hotels in the loop are operating at a profit. It depends to some degree on your bookkeeping system. As the Empire Room at the Palmer House, if the music expense is charged directly to the dining room it is undoubtedly a hurdle for the dining room to leap.

I know the Terrace Gardens have been unsuccessful. I cannot give you an answer on the success of the dining rooms in the Drake and Blackstone hotels. It is not generally so that restaurants are operated for accommodation and not for profit.

I have been over the section of Chicago where the Granada is located, between Clark and Orchard streets and Belmont and Wrightwood a number of times but I cannot say that I am expert on it. I made a survey of that district only in connection with that brief visit yesterday and was there about three hours. I drove around the neighborhood. One in my business has to consider those factors in forming an opinion. I would say that the majority of the apartment hotels in that district, from external investigation, have no restaurants whatsoever. There are a number of restaurants not connected with hotels along Clark street principally.

Clark street is the only business district in that section. Fullerton has some little business around it.

The solarium and writing room in the Granada could be utilized for commercial purposes with the qualifications

that I made. That is that the right type of person and a going enterprise. I would call the Granada an isolated
843 location for business. There is nothing on the outside of the building, nothing in the nature of the traffic by the hotel, to indicate a business location, and the public is particularly blind about a lot of simple things. They will walk through an open door rather than push a closed door, although the effort might not be a very important one. Only thing that comes to my mind for that location would be some woman who was probably selling dresses and had a little following and by dint of her personal acquaintances and telephoning, and so on, such a place might provide a suitable background for that business. It is true that many businesses of that kind are carried on throughout Chicago in apartments and places that have no direct access from the street. Its success is due to the person who carries on the business. That is one of the greatest problems involved —to secure your tenant and then model your space for that.

I was informed yesterday that the Lakeview Women's Club had been using the solarium for many years in cooking or serving their luncheons or meals in that kitchenette during that period. I can see where it is physically possible but it is not efficient. If you had to employ labor for that purpose the present equipment is inadequate. Most leases today are on a percentage basis with a minimum guarantee. The rate varies from 6% to 8%. It may run higher in the loop where there are concentrations of
844 population. That is a matter of agreement between the parties. I will say that operating a restaurant in the Windemere West was comparable to running one in the Granada. We have an area that we think is about as densely populated as that around the Granada. There are no apartment buildings to the south but there are to the east. We are a block and a half to the Illinois Central tracks and two blocks to the lake. There is quite a dense population adjoining our building to the north, along Cornell avenue and Hyde Park Boulevard.

I don't think the concentration of population is quite as great in the Granada as in our particular neighborhood. If I was the owner of the Granada and needed money to keep going it would certainly be a problem as to whether the solarium and writing room and ballroom should be kept vacant as they are now. I think I would endeavor to make some use of that space to bring in some money.

Thereupon there was copied into the record the following portions of the zoning ordinance of the City of Chicago with amendments and corrections to April 1, 1936.

"Section 4. Residence Districts.

"Section 4. Residence Districts. (a) In a Residence district no building or premises shall be used nor shall a building be erected, altered, or enlarged which is arranged, intended, or designed to be used for an A, C, or M use
845 as defined hereinafter. In a Residence district no building or premises shall be used nor shall any building be erected, altered, or enlarged, which is arranged, intended or designed to be used except for R uses or special uses exclusively as hereinafter provided.

"(b) For the purposes of this ordinance, R uses are hereby defined as uses designed for and permitted in Residence districts and conforming to the provisions relating to such districts; and all R uses are classified as R1, R2, R3, or R4 uses as follows:

"R 1 Use—An R1 use shall include every use as a dwelling house.

"R 2 Use—An R2 use shall include every use as golf or tennis grounds or similar use, church, convent, parish house, public recreation building, community center building, music school, university, public school, juvenile dancing school or a private or boarding school or college unless such private or boarding school or college is operated so as to bring it within the definition of a C use.

"R 3 Use—An R3 use shall include every use as a public park, public playground, or railway passenger station.

"R 4 Use—An R4 use shall include every use as a tree or plant nursery, farm, truck garden, greenhouse (unless such greenhouse is operated as a retail business), and a railway right of way not including yard tracks or industrial tracks."

"Section 6. Apartment Districts.

"Section 6. Apartment Districts. (a) In an Apartment district no building or premises shall be used nor shall a building be erected, altered, or enlarged which is ar-
846 ranged, intended, or designed to be used for a C or M use as defined hereinafter. In an Apartment district no building or premises shall be used nor shall any building be erected, altered, or enlarged which is arranged, intended, or designed to be used except for R or A uses or special uses exclusively as hereinafter provided.

"(b) For the purposes of this ordinance, A uses are hereby defined as uses other than R uses, designed for and permitted in Apartment districts and conforming to the provisions relating to such districts; and all A uses are classified as A1, A2, or A3 uses as follows:

"A1 Use—An A1 use shall include every use as an apartment house.

"A2 Use—Ar A2 use shall include every use as a boarding house, lodging house, or a hotel which is maintained within the limitations in Apartment districts imposed thereon by this ordinance.

"A3 Use—An A3 use shall include every use as a public library, public museum, public art gallery, hospital or sanitarium, and eleemosynary institution except as otherwise classified, or a private club excepting a club the chief activity of which is a service customarily carried on as a business.

"Section 7. Auxiliary Uses in Residence or Apartment Districts.

"Section 7. Auxiliary Uses in Residence or Apartment Districts. (a) Auxiliary uses which do not alter the character of the premises in respect to their use for residential purposes shall be permitted in Residence and Apartment districts. Auxiliary uses shall include the following, but the enumeration of such cases shall not be deemed to prevent proper auxiliary uses that are not referred to:

847 "Signs not over twelve square feet in area advertising the premises for sale or for rent which are located (if space occupied by building does not prevent) not nearer to adjoining premises than 8 feet or nearer to a street line than the building line established by this ordinance;

"The office of a surgeon, physician or dentist, clergyman, lawyer, artist or other professional person, located in the dwelling or apartment used as the private residence of such person;

"Customary home occupation located in a dwelling, studio, or apartment and carried on only by the members of the household of the person occupying such dwelling, studio, or apartment as his private residence, provided no window or other display or sign is used to advertise such occupation other than a window card not greater than 1 square foot in size;

"The renting of one or more rooms or the providing of table board in a dwelling or apartment occupied as a private residence, provided no window or other display or sign is used to advertise such use;

"A public dining room or restaurant located in a hotel, provided that the public entrance to such dining room or restaurant is from the lobby of the hotel, and further provided that no window or other display or sign is used to advertise such use;

"~~*Such facilities or retail shops as are required for the*~~

~~*operation of a hotel or apartment house, or for the use or entertainment of guests or tenants of the hotel or apartment house, when conducted and entered only from within the building; provided no street window or other exterior display or other exterior sign is used to advertise such use; and further provided that*~~ in an apartment district which is also in a 4th or 5th volume district, at any time after May 15, 1940, but not previously (and no construction shall be given to the following language which would permit the uses therein named or any of them before the expiration of said period), an auxiliary use shall be deemed to include a retail shop on the ground floor of an apartment house or hotel (which apartment house or hotel is not less in height than 120 feet), such shop having a store front with show windows on and an entrance from a street, with such signs only as are on the glass of said window or entrance door; provided, however, that no such retail shop, such store front or entrance, or such sign shall be used for any purpose or business (1) which is not suitable to the neighborhood and to the main occupancy of said apartment house or hotel, (2) which involves the trucking of material through the abutting or adjacent streets or alleys in sufficient quantities to produce undue congestion in such streets or alleys or to interfere with the usual functioning of those streets or alleys, or (3) which is of such character as an automobile or automobile tire or accessory business, or heavy machinery display or sales room, garage, meat market, bakery, grocery store, hardware store, ice cream parlor, soda water fountain, gasoline filling station, street front lunch room or cafeteria, undertaking establishment, laundry, amusement place, or any other use of an objectionable character; and the specific enumeration above of certain uses shall not be held to exclude other uses which are unsuited to the neighborhood although not specifically enumerated."

An ordinance was passed March 27, 1935, amending Section 7 by deleting that portion of Section 7 which is lined out. There was also received in evidence the volume maps and the use maps which are part of said ordinance.

OSCAR W. DAUBER was called as a witness on behalf of City National Bank and being duly sworn, testified:

Direct Examination by Mr. O'Brien.

I live in Chicago at 7658 Rogers Avenue and I am a Consulting Engineer—Mechanical and Electrical.

As a part of my work I have had occasion to design and install heating plants and electric equipment and like items. I have performed service of that type on the Randolph Hotel, which is now the Bismarck Hotel, the Metropolitan Building and Palace Theatre, the Windermere Hotel, the United Masonic Temple Building, Chicago Theatre, Uptown Theatre, Detroit Leland Hotel, Washington Press Club Building, Paramount Theatre and office building in New York, Paramount Theatre and office building in Brooklyn, Ambassador Theatre and office building in St. Louis, Michigan Theatre and office building in Detroit. I am also Consultant with the Highway Department, State of Illinois.

From 1907 until last December I was the Engineer in charge of all work for C. W. & George L. Rapp, Inc. Since that time I have done and am doing work for Shaw, Naess & Murphy, C. W. & George L. Rapp, Inc., Pereira & Pereira, Ivor Viehe-Ness. I have never done any work for you or City National Bank.

850 I have brought in this morning a report concerning heat and refrigeration and water service by the Granada Hotel to the Arlington made at your request. Mr. Charles Murphy recommended you to me. Prior to making my estimate I had the records handed to me by City National Bank showing all of the material cost figures, for boiler repair, current, electric current, and the water, and repairs and maintenance. I also had copies of reports by Mr. Lewis, Mr. Schott and Mr. Brooke which indicated the cost of the original installation of the plant. I assumed their figures as to the original price of the equipment to be correct. I was furnished with data through Mr. Brooke as to the actual square foot of radiation in the Granada, the Arlington and the Lincoln Park Manor. I made a visual inspection of the machine room and boiler room at Granada and the mechanical equipment, consisting of refrigeration equipment, water treatment, water pumping and heating. It was necessary for me to know the actual capacities of the various elements and to determine about the number

of hours it would operate. I talked with the Engineer and we discussed the operation and necessary repairs that were made from time to time and the condition of the equipment, and looked it all over in his company.

In arriving at the operating hours of this equipment I used my judgment based on past experience and the information given by the Engineer. Based on that information, I prepared and brought in here the report.

Document marked City National's Exhibit W for identification is my original report.

851 Thereupon, CITY NATIONAL'S EXHIBIT W was admitted in evidence.

I read a copy of Mr. Schott's report that was furnished me. In my report, as to repairs and maintenance, I took what was shown from the Schott report and figured the average for a four-year period from those records. I think from the Schott report he provides for interest on the initial cost of installation at the rate of 5%. I figured it at 6%. I noticed that Schott's report figures amortization over a period of fifteen years at 4.3 per cent. The life of the plant is at least twenty years, and with care it can be extended much longer. In figuring amortization I, therefore, took it at three per cent for a twenty year period. I think that the figure 5.7 per cent in Schott's report for maintenance and supplies is excessive. As Schott's report includes specific items and charges for maintenance and repairs I think the figure of 5.7 per cent is an excessive repetition of the specific figures that were included in the making up of the cost.

In my report, I didn't figure any percentage for maintenance, repairs and supplies over and above the actual charges for those items over the four-year period. I allocated what I though would be the amount of repairs and maintenance and I didn't exceed the amount that I took for the average for the four years from the records. I have no maintenance item in my report to compare with the 5.7 per cent charge in Schott's report.

852 After computing the operating costs of the Granada of furnishing heat, refrigeration, hot and cold water I added to those costs six per cent on the $44,400 original investment. I determined the proportionate share of the Arlington of the three per cent for amortization. The proportionate share of the Arlington of the 2½% for insurance and taxes and the 2½% in relation to the original cost of installation. Having added those items and the operating charges, together, I allowed in addi-

tion a profit of ten per cent which, in my opinion, is a reasonable profit to be derived for the furnishing of services by the Granada to Arlington.

Profits to the Granada derived from furnishing these services to Arlington not reflected expressly in my report are profits due to the fact that Granada's own electric current and own labor used in producing those services for itself are less when it produces them in this mutual arrangement rather than just individual to itself.

If Granada were not servicing Arlington it would still have the labor payroll to operate this plant. I didn't make a calculation of the increased cost to the Granada of electric power in event it were not servicing Arlington. I just turned it in my mind and realized that there was a profit there. In arriving at the benefit that portion which would be taken off of their bill, which is now used in producing the service for the Arlington, naturally would be taken off the lowest bracket of the rate. Therefore,

853 Granada's average cost would be higher than the average now, which is .016, and the difference would represent the value of this benefit that Granada now enjoys.

Schott's report lists under "Operating Charges" the following items for maintenance and repairs, namely: $600 under refrigeration expense; a like amount under heating expense; and $100 under water-house service expense; making a total of $1,300. The actual annual charge for the four-year period averages $630 from the records. In apportioning the cost of operating charges and other items between the three buildings I used the ratio of the actual radiation installed, square feet of heating surface. For refrigeration I used the ratio of the ice boxes installed. For the hot water I used the ratio of hot water outlets and for the cold water I used the ratio of cold water outlets. I didn't have the bills from the bureau of water in respect to the volume of water consumed annually. They paid an annual amount for water consumed in each year and I took average of that, the average cost and divided it by the rate and got the number of cubic feet which they bought for that money for the average of the four years.

Cross-Examination by Mr. Rosenstone.

I got the figures on the first page of my report—boiler plant $19,000, refrigeration plant $16,230, water pumps, heaters, tanks, etc., $9,230 from the reports and

I assumed they were correct so used those same figures. My recollection is that they are the same figures Mr. Schott used.

854 I made no inspection of the plant for the purpose of ascertaining those figures. I made an inspection of the boiler room in the Granada but didn't measure how many square feet there are in that room and don't know. I didn't make any estimate of cost of the construction of the room.

In making my final recapitulation, I didn't take into consideration the cost of building that room. I don't consider that a necessary element in making my determination because the room had to be built there for Granada's own plant and there is very excessive room for the equipment that is there.

I have to take into consideration the original cost of the boiler, water pumps and refrigeration plant in order to proportion the charge. I don't think the same rule applies to the original cost of the room. In my judgment ten per cent profit to Granada should be sufficient for furnishing these services. There are other profits in addition to that ten per cent. I would be able to buy my service cheaper along with the other fellows'. I don't think the fact that Granada does not control the other two hotels makes any difference in making the report. I understand that either the Arlington or the other hotel could quit any time they wanted to. Anybody could quit unless they had an ironbound contract. I took into consideration the hazard the Granada is running in operating such a large plant,—the hazard of their inability to control the other hotels—and I still say that ten percent is a

855 sufficient profit to the investing hotel.

As Consulting Engineer I would advise anyone to make an investment in a plant of this kind on the ten per cent net profit basis. Considering that after finding out just how much additional benefit he is going to have ten per cent would bring it up to a good rate. Supposing that there wasn't a contract, I might still advise a client of mine to make an investment of that kind on a ten per cent basis. I would consider that sound business.

I didn't take into consideration the cost of construction of the boiler room in determining my service charge. I do not think that is a necessary element like the cost of the installation of the pumps, boilers, refrigeration and other accessories because it is necessary for his own plant, for his own use.

I obtained the figure $2,460 per annum for labor cost from the records I received from City National. I believe that is about the same as Schott's figure. I would have to refer to his report. I don't know whether the allocation of expenses of the various operations at fifty per cent for refrigeration, forty per cent for heating and ten per cent for water service corresponds to Schott's figures.

The refrigeration requires 365 days attendance. Two men are necessary to operate the refrigeration. It does not necessarily require all of their time. They have to be there twenty-four hours a day and I presume they split it twelve hours each. They wouldn't have to actually
856 work, but they would have to be in attendance to see that it was operating and in order to get the temperature when it is necessary to shut down for a period of time—which he would do. The rest of the time he would be looking after the heating plant and water plant.

During June, July, August and September it would require no services as far as the heating plant is concerned. It is problematical as to how much of the time would have to be devoted to heating by these two men the other months of the year. Some days they might have to devote quite a bit more than other days. On an average it would probably be about two-thirds of the time.

The time devoted to the refrigeration plant would be comparatively small in relation to the other two operations. I was not told to make a large charge against the refrigerating plant in my labor expense. When this report was ordered I was told to find out what the reasonable proportionate charge of the cost would be for the three properties.

"Mr. O'Brien: Tell the Court just what I told you about that, Mr. Dauber.

"The Witness: You said you were giving me these reports and the information from the City National and you wanted me to deliver an unbiased report and set down just what the facts would be—what would be developed in arriving at the operating costs." (Witness resuming) Mr. O'Brien said nothing to me about boosting up the refrigerating plant. I didn't make an inspection of the other two hotels.

In determining the number of ice boxes, the plumbing outlets, both hot and cold water, I took the records
857 of the number of rooms and baths and figured out how many outlets there would be in the total, in each property.

I didn't examine blueprints of these three buildings, I only had a floor plan of the basement in the Granada. The information as to the number of outlets in the Arlington and Lincoln Park Manor was on the record which I received from the City National. City National's Exhibit 7.

On page 5 of my report under cost of heating I got 112 gallons of fuel oil by taking from the records the total amount paid for oil, figuring how many gallons were purchased and figuring how many gallons were required to heat the hot water. I totalled that, deducted it from the total and that makes 112,100 gallons which would be used in the heating. That 112,100 gallons would be what they purchased in that year. It is the average from 1933 to 1936, inclusive.

The price of .0475 is the market price which is still about that—that is .0475, No. 6 oil. I show how I arrive at 7230 kilowatt hours at .016 on page 4—with the first grouping there, heating. I take the size of the motor, the number of hours that it runs, the kilowatts it would consume times the number of days it would run—that gives you the total consumption of that motor. The number of days the motor would run is estimated and from the advice of the Engineer who operates it and from regular practice. I don't believe they have a record of how many days they run the motor. It is an
858 estimated figure and that applies to both oil burner heaters, the oil pump and the vacuum pump motor. There is not a record at the hotel that discloses how much electricity was used during the years 1933, 1934, 1935, and 1936 for those motors. There is a record as to how much was consumed in those years by the entire property.

There would be three meters in the Granada. I didn't examine them. I didn't examine the electric light bills or receipts. I didn't examine vouchers in order to ascertain how much had actually been paid for electric light and power for Granada. I took this record which I received.

It is necessary to have one meter for power, one for light and one for emergency. There is no current passing through the meter for light for any purpose other than light in Granada Hotel, which includes lights for guests as well as for the hotel in general. There is a meter for power which records the electricity so used just for the Granada. I expect there are meters in the other two hotels. I didn't see them. They must be there.

The three buildings appear to be about the same type of construction. I don't know whether they were built about the same time. When I made my report I had before me Schott's report. It was not my purpose to make a report that would show a lesser amount to be charged against the Arlington than he showed. I left out the charge of boiler room space in Granada as a basis
859 for arriving at my figures.

I figured interest at six per cent on the cost of the installation instead of five per cent because I think at the time that hotel was built ten, twelve or perhaps fifteen years ago, they must have paid six per cent for their money at that time.

On page 5 the last item of each computation was where I arrived at the cost of each service. Under refrigeration I allowed three per cent amortization on $16,280, under hot water three per cent on $4,230 and three per cent on $5,000, making a total of $44,410 for all equipment. Three per cent is the accepted figure for amortizing in twenty years. On a fifteen year amortization I would use the 4.3 used in the other report. My experience in determining and figuring costs of this nature is figuring costs at all times, checking contractors' estimates for installation, checking the operating engineers for their costs after we make installations from time to time and checking costs for operating at all times. I don't recall a parallel situation like this where I attempted to allocate the expenses.

In my usual work my cost of figuring does not pertain to new constructions, new installation or alteration. I just made a report for a laundry in which the purpose was to determine whether or not it would be advantageous for them to buy or make their own current, where we had to allocate the different charges for the different departments in a similar fashion.

Determining how many more years this equipment will probably last is not so much guess as it is comparing
860 it with the length of life of similar equipment. With normal upkeep and normal care that equipment would normally last twenty years—with good care, it might go forty years. If the property has been allowed to depreciate because of lack of attention, it would be obsolete, or at least unusable in a much shorter time than if it were properly taken care of.

In determining what depreciation should be used in my report I considered that the equipment was in possibly

twelve to fifteen years and it is in good condition yet. The only place I found it needed care and attention was the pump. It was dripping and leaky and it needed packing, that is all. I didn't see any evidence of recent repairs. The operator told me he had to replace a shaft in the two prime pumps. One pump was operating, the other was in operating order but not operating.

Redirect Examination by Mr. O'Brien.

The 29,780 kilowatt hours at the bottom of page 4 of my report for elevator, laundry, etc., is the residue I arrived at after deducting for the four particular services and the amount which necessarily would have been consumed by all of these various motors that serve only the building and not these plants. It is possible to make an accurate scientific check of the power these elevators consume and such test might disclose a greater or lesser number of kilowatt hours.

Recross Examination by Mr. Rosenstone.

My allocation of the electric current to these vari-
861 ous operations are estimated on the basis of taking actual motor size and the estimated hours and days that they would run. There is no record as to what days and hours motors ran but we know that the ice machine has to run 365 days. There is no record whatsoever as to how many hours the various motors actually operate.

Hearing October 8, 1937, before the Honorable John P. Barnes.

Met pursuant to adjournment.

Present:

Mr. Woods,
Mr. Rosenstone,
Mr. O'Brien.

FREDERICK JOHN MACKIE, called as a witness by City National Bank and Trust Company and being duly sworn, testified:

Direct Examination by Mr. O'Brien.

I live at 737 Hinman Avenue, Evanston, and am a research analyst with R. Cooper, Jr., Inc. which sells General Electric individual refrigerators. It sells a four-foot box.

I have made an analysis of operating costs in quite a number of buildings on that box. The average cost per month per box of operating units of that type depends upon the electric rate. Taking a three-cent rate which is the household rate in Chicago and it would approximate sixty cents a month on the basis of consumption of an average of 20 kilowatts—kilowatt hours over a 12-month period.

Larger buildings having Commonwealth Edison Company C-1 rate, which is the first 6,000 kilowatt hours, is at 2.6 cents; the next, 24,000 kilowatt hours is at 1.1 862 cents; and the next 70,000 kilowatt hours is at .9 of a cent. Plus a kilowatt demand charge of $2.00 per kilowatt of maximum demand.

Assuming our boxes operated in a 75-flat they would be on the C-1 rate. By putting in 75 General Electric refrigerators we would be charged at the 1.1% rate, plus $2.00 for the kilowatt demand.

With the analysis I have here on 422 refrigerators placed in five buildings, the average consumption over a year's period per refrigerator was 21.8 kilowatt hours and an increase in the kilowatt demand was 28 watts per machine. On that basis that would be a cost of 24 cents. But there is one building in here, where they get down on a rate of .45 of a cent; so I should say that a conservative figure would be not in excess of 30 cents per month per refrigerator.

I have seen the Arlington building. I know they had a system in there. In fact, I tried to make an operating cost analysis at one time, but we could not gain permission.

I checked last month's bills at the Edison Company for the Arlington property for the month between 9-3-36 and 10-5-36. Last year the light meter consumption, which is number 17,373, was 64,016 kilowatt hours and the kilowatt demand was 24.5. If you subtract last year's period from

this year's period you get a difference of 2,012 kilowatt hours and 5 kilowatt increase in the demand. If you figured kilowatt hours at 1.1 cent less 10 percent discount, and the kilowatt increase—you will get a charge or an increase in the cost of approximately $32.13 for one month's operation. That averages approximately 50 cents per box. Of course, it must be remembered that our boxes in there are new and naturally they consume more current the first month, because they go in at room temperature and heat has to be extracted out of the insulation. It would be possible to get the charge per month per box more than that per month by setting the machine, but if you did you would probably freeze the food and naturally the tenants would not want that. In normal operation the average would be as stated.

I analyzed the total maintenance on 550 of the oldest General Electric Refrigerators we have in the City of Chicago, in the larger buildings. The oldest installation in a large building is 4200 Hazel Avenue, 65 General Electric Refrigerators installed in there. They were installed April 23, 1928 and the analysis was up to 1937, which is a period of nine years. During that time the cost of unit replacement was $1,047.85; cost of service was $179.48; the total cost, including unit replacement and service was $1,227.33, which breaks down to the cost per year of $136 on 65 machines.

That is the worst installation we have in the City of Chicago. They would not allow us to cut cabinets, and that is a monitor type of refrigerator and we had to put it up on the top; consequently, the operating was a good deal longer and you have higher temperature motors, causing excess of burning out of the motors.

Where we do not have these abnormal conditions but normal conditions, the cost per year per machine on 500 machines over a period of seven years and nine months is $1.22 per machine per year.

Cross-Examination by Mr. Rosenstone.

I am not a salesman with Cooper & Co. Business with Cooper & Co. is distributing General Electric products, including refrigerators. General Electric only builds the individual electric refrigerator and markets it and supervises it. They only sell these separate unit refrigerators.

J. ROY HUBBART, called as a witness by City National and being duly sworn, testified:

Direct Examination by Mr. O'Brien.

I have found two of the original heating and refrigeration agreements existing between the three old hotel properties here. Instruments marked City National Exhibits X and Y are those two agreements. Y is the agreement between the Mateer Hotels, Inc. and Lincoln Park Manor Building Corporation, which we found in the files of the Lincoln Park Manor trust. X, which is the agreement between Granada Hotel Corporation and the Mateer Hotels, Inc. we found in Mr. Albers' office, the receiver of Central Republic Trust Company. Mr. Albers sent it over late yesterday afternoon.

We have never been able to find the corresponding agreement on the Arlington property. I saw the agreement with the Arlington, which is similar to these instruments X and Y.

865 In looking through the files for various things in connection with the Arlington I came across that agreement and, as has been my habit with items that might be of use in my work in operating properties, I have often made copies. I made a copy of it at the time and have had it in my files ever since. The instrument marked City National's Exhibit Z for identification is that copy. I believe other copies were turned over to you and I believe Mr. Woods received a copy from our office.

I first met Mr. Woods on Wednesday, May 19.

The instrument marked City National's Exhibit A-1 for identification is the estimate I obtained from the General Heating Company, represented by Mr. Young on the cost of installing a heating plant in the Arlington Hotel. The estimate bears his genuine signature.

Individual electric refrigerators were installed in the Arlington property in December, 1935, and January, 1936, due to difficulties with the boxes that were in those particular apartments. Later, in August, 1937, the balance of the apartments having refrigeration were equipped with a total of 61 more. 76 boxes cost $100 a piece and are three-foot and four-foot depending on the size of the apartment.

There are various operating bills incurred by City National Bank and Trust Company as Trustee, some of which,

I believe, are still unpaid. Those bills were set forth
866 in the report and account of City National, as Trustee, filed in this proceeding and were all incurred in and about the operation of the hotel premises and in each instance, represent the fair and reasonable charge for the item covered.

I have seen the instrument marked City National's Exhibit A-2 for identification before and have also seen the original, of which it is a copy. The original, I believe, was furnished us by Mr. Hall on or about the date it bears, which is January 5, 1934.

Cross-Examination by Mr. Woods.

I have never notified you or the court that there were any electric refrigerators in the Arlington Hotel. If you are referring to the ones that were in there since 1935, I think I mentioned them to you when I visited with you. I have no written record showing that the Trustee of the court had any information that I had installed electric refrigerators except when the individual units were installed your representative of the Granada property, Mr. Parker, was notified to shut the valves and discontinue the service. That was done by myself personally.

It is not a fact that I called Mr. Parker at 5:30 in the afternoon when I knew you were on the train and told him that I wanted to defrost some boxes. I didn't know you were going out of town. I notified Mr. Parker that he could shut off the current at that time which would give an opportunity for the boxes to defrost over night so that the new boxes could be put in service. I knew where
867 your office was and what your telephone was and how to reach you and I never notified you at any time that I wanted the service discontinued and I never notified you directly that I wanted the service discontinued.

Lincoln Park Manor Trust is a trust with the City National covering Lincoln Park Manor Hotel. I never went into the Trust completely. I have had nothing to do with the operation of that property.

There is also a trust in reference to the Arlington Hotel. I cannot say whether a trust consists in the equity in the property. I am not conversant with the trusts themselves. My business has been operation of the properties.

Redirect Examination by Mr. O'Brien.

It is set out in my report from this case that the Arlington was to install individual refrigerators in any event. The brine piping was giving us considerable trouble.

The coils and ice cube trays were very obsolete. I had wanted for a long time to put individual refrigerators in the Arlington. I had decided in my own mind but could take no action until after the property was reorganized. I had been of the opinion that a heating plant should be put in the Arlington. I have not received any direct orders to do so, although I have planned to do such a thing.
868 Mr. Woods made a demand for $1000 a month during the summer vacation and I wished to put in a heating plant at that time.

I have refrained from putting it in at your suggestion, pending the outcome of this proceeding. Mr. Woods has never talked with me, or with anyone else so far as I know, in an attempt to negotiate an agreement, looking to the continued use of the Granada heat and refrigeration.

The Arlington plan was put out long before the filing of proceedings here and provision was made for the installation of its own plants, both heating and refrigerating.

Recross Examination by Mr Woods.

I never made any suggestion to you or to the court that there was any difficulty with any pipes in the Granada. The difficulty was in the Lincoln Park Manor and the Arlington and I presume there was some trouble in the Granada. It was the main piping. I mentioned to you that there was trouble with the pipes when I visited you on May 19. I didn't tell you that the whole plant was no good and should be taken out.

I told you the plant in many ways was obsolete as far as the pipes and boxes were concerned. My idea is not that nothing should be repaired or fixed up or that it should be allowed to wear out in order to get something new. That is not what we did at the Arlington. It is because with the individual electric boxes you get greater efficiency
869 at less cost. I didn't learn that from this cost expert but after many years of investigation and operation, both kinds of plants.

It was not necessary to upset the arrangements in the engine room because I notified Mr. Parker. He did not have to turn it off within several hours unless he wished, and you can shut down a plant in a very few hours without any difficulty.

EDWARD HALL, called as a witness by City National Bank and Trust Company of Chicago being sworn, testified:

Direct Examination by Mr. O'Brien.

I live in Chicago and am familiar with the Granada, Arlington and Lincoln Park Manor properties. In December, 1933, Chicago Title and Trust Company took possession of the Granada, as receiver, and I was agent in charge for the receiver.

Around that time I had conferences with Mr. Hertzman and others of City National relative to charges being made and to be made for heat, refrigeration and other services from Granada to Arlington. At the conclusion of those discussions an instrument was prepared of which City National's Exhibit A-2 for identification is a copy. The signatures appearing on the original which you hand me are those of Roger W. Walters, President, Granada Apartments, Inc.; George U. Nichols, Secretary of the same company; Edward Hall as President of the Warr[illegible]iart Apartments Building Corporation; attested by Cecil Clark, its Secretary. Those are the genuine signatures 870 and handwritings of those persons.

The instrument was prepared by you at my suggestion, I think. That was on or about the date it bears, January 4, 1934. I procured the signatures from these various people. They were at that time officers of those various corporations.

Granada Hotel Corporation was the corporation which made the first mortgage bonds involved here. Mateer Hotels, Inc. was a sort of holding company for the operations of Fred Mateer, promoter of this group of buildings and one or two more in the neighborhood.

February 9, 1924 Granada had not been erected but the basement was there with the heating plant and refrigerating plant roofed over. The Arlington and Lincoln Park Manor were erected and in operation at that time.

I can identify the signatures appearing on City National's Exhibit X for identification, which is the agreement between the Granada Hotel Corporation and Mateer Hotels, Inc.

The first signature appearing is that of Charles B. Mateer, who is President, or was President of the Granada Hotel Corporation, attested by D. B. Hall, Secretary. Fred D. Mateer, President, signed on behalf of Mateer Hotels,

Inc., attested by P. R. Weidener, Secretary of Mateer Hotels, Inc.

At that time Mateer owned all the stock of both corporations. I can identify the signatures on City National's Exhibit Y for identification. They are those of George U.
871 Nichols, President of Lincoln Park Manor Building Corporation, attested by Fred D. Mateer, Secretary. On behalf of Mateer Hotels, Inc., Fred D. Mateer, President, and attested by R. R. Weidener, Secretary. I have never seen the agreement, Exhibits X and Y before, although I have some knowledge of their existence.

Thereupon, the documents marked CITY NATIONAL'S EXHIBITS X, Y and Z, respectively, for identification, were received in evidence.

There was thereupon offered in evidence City National's Exhibit A-2 for identification, which is an agreement between Granada Apartments, Inc. and Warren-Hart Apartments Building Corporation.

(Witness Resuming.) No one asked me to sign City National's Exhibit A-2 for identification. It was the consummation of a transaction that I, myself, arranged. I probably asked Cecil Clark to sign it. He was the Nominal Secretary and had no active part in the operation of the property.

There is an original which can be found and it undoubtedly has the seals of both corporations on it.

This document was followed by a conventional journal entry setting up its provisions and conclusions. An entry was made at the closing of the books on December 31, 1933.

Roger W. Walters was President of the Granada Apartments, Inc. He is a real estate man on the north side. He has been owner of the equity since the corporation was organized in 1928. At the time he signed City National's
Exhibit A-2 for identification I was Nominal President
872 of the Warren-Hart Apartments Building Corporation, which is the equity owner of the Arlington Building. I was operating both of the properties at that time on behalf of the Trustee of the Arlington and on behalf of the receiver of the Granada, who was Chicago Title and Trust Company. I was doing the actual work of operating. The receiver did not operate it at all. Chicago Title and Trust Company went into possession December, 1933. The bank had nothing to do with it until April of 1934. I drew $50 a month for expenses and nothing else for operating, which is the sum I fixed in the beginning. I have been in there since December of 1931.

In addition to myself we had the Manager, aside from the Manager there were the lawyers. Aside from the lawyers and myself nobody did anything. That existed in reference to the Granada until the matter came into the Federal Court in May of 1937.

The Granada was in the State Court in the foreclosure proceeding at the time I signed this agreement. At that time the Chicago Title was operating the property through me.

During that portion of the year 1931 that I was in charge and 1932, we collected at the Granada from the Arlington, $1,015 per month for heating, refrigeration, hot and cold water and elevator maintenance, which was sometimes more than the net amount of money left after bills had been paid at the Arlington; consequently, in 1933 the pressure about that situation increased and the consensus of opinion of a number of Bondholders
873 in the Arlington was that the Granada was milking the Arlington property. I cannot name the bondholders now.

There was evidence that the charge was too high. In 1930 the people in charge of the Granada more or less followed the contract executed between Barton and Granada Apartments, Inc., which provided for $600 a month for six months of the year, and $900 for the winter months of six months; but in 1931 the agent in charge of the property arbitrarily raised that to $900 for the twelve months of the calendar year. That was the main basis for the contention that we were overcharging, and it was quite apparent on the face of it that it did not cost as much to service the building in the summer as it did in the winter. That contract is between a man named Barton, who had purchased the Arlington property in 1927, and the Granada Hotel Corporation. The contract is an exhibit here. So that this arrangement of $600 a month for 1933 was simply an evening up measure and to avoid censure and also to avoid steps that might have discontinued service,—there was some talk about putting in a plant and building ice boxes. The Granada could not continue to lose the revenue; they needed it; even today they still need it.

Cody Trust Company had a very substantial investment in the Granada and also in the Arlington at one time. They parted with their interest in the Arlington and sold it to Barton in 1927. Later, they parted with their interest in the Lincoln Park Manor and sold it to

C. C. Campbell. Then Gehm, who owned the second mortgage, foreclosed and got the Lincoln Park Manor. In
874 1933, during the time the Title Company was receiver, Granada Hotel was the only property in which the Cody Trust Company had a continuing investment.

It was the Cody Trust Company which in the past had raised and varied these rates as they existed in 1924. In 1924 they were operating under the three-party agreement in evidence, and from time to time as Cody's disposed of the different properties they put in effect new agreements, always with the Granada getting heavier revenue.

Mr. O'Brien: "Here is the situation, your Honor. The contracts that were made call for the payment by these properties to the Mateer Hotels, Inc. of the annual operating costs and expenses, plus 15 per cent of the cost—not 15 per cent amortization or depreciation on the investment, but 15 per cent of the operating charge. That was the original arrangement and continued until these other two properties were sold off."

Mr. Woods: "Why certainly, Mr. Mateer was dealing with himself."

Mr. O'Brien: "All right."

Mr. Woods: "He had the Mateer Hotels Corporation, which was an operating company, and he owned the whole stock of all these hotels. He made an agreement with himself. What difference does it make what the terms were?"

(Witness resuming.) For a time Granada Hotels,
875 Inc. charged the Arlington Hotels $600 in the summer and $900 in the winter. That was approximately the year 1930. From the books of the Granada Apartments, Inc., that arrangement started with the formation of that company early in 1926 and continued until the Trustee, Central Republic Trust Company, took possession in 1934. Then they opened their own set of books. The charges were this $600 a month which we had agreed upon. That is the basis of this document here. I am speaking of the period prior to that agreement. It was afterwards raised to about $900 by the agent of the Cody Trust Company. He was running the Granada Hotel. The $900 a month was collected for the entire calendar year 1931 and the calendar year 1932. In 1933 we readjusted matters and collected $600 for the entire service. We began that in January, 1933. Pending the consummation of the agree-

ment we charged the building with the full amount and collected each month $600 and let the balance ride. That was written off at the end of the year by a journal entry.

The officers of Granada Apartments, Inc. represented the Granada, to a certain extent, in making the trade and they knew personally of this. They were Nichols and Walters. They were satisfied with that rent. I recommended that way as the solution of washing up the balance that had been made on the overcharge of the past.

I traded the contract on behalf of the Arlington. I
876 was in charge of that building as well. It was not in the hands of a receiver. No one else than myself tried to get as much money as he could for one side and as little money for the other side.

Mr. Woods: "I contend the document is fraudulent, your Honor."

The Court: "Well, it may be received."

Whereupon the memorandum of agreement made as of the 1st day of January, 1933, between Granada Apartments, Inc. and Warren-Hart Apartments Building Corporation. was received in evidence as CITY NATIONAL'S EXHIBIT A-2.

While I was trading this agreement I conferred with the Trustee, which was in possession of the Arlington property. It was before they took formal possession that this deal was started. They took possession on December 31 of 1933, but these acts had been committed before.

I recall the provision in City National's Exhibits X, Y and Z that the arrangement was not to be changed without the consent of the Trustee under the first mortgage. It was because of that provision that the Trustee sat in this conference. I presume the Trustee sat in this conference on behalf of the bondholders of the Arlington. The Trustee was the Central Republic Trust Company, later City National Bank and Trust Company.

877 Up until that time the Cody Trust Company, which controlled the stock of the Granada, was getting whatever price it fixed from the Manor and from the Arlington. That was prior to the first mortgage defaults. I don't remember any particular complaint from Mr. Hubbart that the money being paid by the Arlington to the Granada was too much. I don't remember Mr. Hubbart insisting that it was too much and that he would not pay it until later in 1933. We were trying to collect that money from the Arlington du. ng 1933. Nobody re-

fused to pay it. Sometimes it was not there to be paid. We got $600 per month from the Arlington. I cannot remember Mr. Hubbart insisting that we had been getting too much. I did not hear his testimony in this case.

Mr. Woods: "Mr. Hall, isn't it the fact that the Barton contract, dated in 1927, would have come to an end after six years, sometime in 1933, unless it was renewed; isn't that the fact?"

A. "Sir?"

Q. "Isn't that a fact? Read the question, please."

A. "Well, why they had all that—"

Q. "Wasn't that the reason, that they simply refused to make the payment during the year, they wanted to kill the contract?"

A. "No, it was not, Mr. Woods."

(Witness resuming.) I had other buildings along in 1933 and January, 1934, but those three buildings
878 were the only ones I set any specific price on. I was getting some money from other buildings. I had no buildings for the Central Republic. I had two buildings for the Massachusetts Trust Company of Worcester, Massachusetts. I didn't start getting money from the Central Republic Trust Company until 1934. February, 1934, is the first money I got from them. Central Republic Trust Company, after this contract was signed, simply continued the arrangement existing. They did not put me on the payroll or hire me, or anything else. They merely left things as they were when they stepped in. When I said that a reduction to $600 was made to even up, I meant to adjust the complaints that had been made and the talk that was going on about an overcharge in the past; to sort of even up where there had been overcharging before, to avoid any comment, if possible. I did not know exactly how much it evened up because it would take quite a bit of auditing and going over the books and trying to straighten out a number of peculiar entries that had been made in the past. Frankly, we did not have the time or inclination to go into that at that time. It was largely a question of keeping the property going. There was very little money coming in to do this. You know what the conditions were in 1933.

I believe it a fact that Granada Apartments, Inc. was really organized by the Cody Trust Company and prac-
tically all properties were in their control as long as
879 they were operating. I am not familiar with whether the Warren-Hart Building Corporation was similarly

under the control of the Cody Trust Company or some other trust company, because that grew out of those trading transactions that took place there. Those trades did not stick—they all came back. They all brought some money into the pots. Lincoln Park Manor did not come back.

I remember when the fixture litigation of Pick was settled. Prior to the time of that settlement I had an appraisal and complete inventory made of the property in the Granada Hotel premises. It was made by the Chicago Seating Company. Their business is furniture and appraisals. Mr. Murphy, the head of the company, was out there, but an associate whose name I don't recall made the appraisal for the company. They furnished me a copy of that appraisal in writing, signed by them.

The document marked City National's Exhibit 3-A is the appraisal I ordered and received at that time, signed by W. J. Murphy and Gary Young on behalf of Chicago Seating Company.

I first became connected with the operation of the Granada Hotel premises December 1, 1931. Central Republic Trust Company, as Trustee, took possession of that property sometime in the month of March, 1934, I believe. Continuously since March, 1934 I was identified with the operation of this property. At no time during that period
did the Granada Apartments, Inc., or Cody Trust
880 Company, or anybody else having any ownership in
that hotel property, request that the lobby space be revamped, at least in part, for commercial purposes or for a dining room.

Early in 1934, Ingersoll, Wenstrand and others acquired ownership of the stock of the Granada Apartments, Inc. Wenstrand was familiar with the operation of this hotel property. He lived at the Lincoln Park Manor all that time. I never sought his consent or the consent of anyone to utilize the space in the Granada for commercial purposes and for dining room purposes. Personally, I did not think it was very profitable. I did not think it should be done and do not now.

I was familiar with the incinerator out there and with its condition at the time the Trustee in Bankruptcy was appointed here. I was at the premises some time each day. The incinerator was functioning and had been used. We had found it necessary to repair it from time to time and did so. We repaired it with our own help to save money.

It could have been repaired in the same way since the Trustee has entered into possession, although it was a job that we had discussed and had deferred until a convenient time financially to do it. It was a job that was necessary to do at some time. It could be repaired so that it would function and operate by the same means that were
881 employed before. If I owned the property, I don't think I would have spent $500 at that time to fix it up. I haven't been known as being much of a spender.

I remember that $8,500 provision that was in the receiver's certificate at the time it was drafted, in relation to rents, and that it was not for lawyers or lawyer's fees. It might have been with the thought of receiver's fees but not receiver's agent's fees, because the agent was bound by his $50. We looked ahead to the time of reorganization. Frankly, I did not think very much about who was going to get the $8,500. We simply reserved it so that we would have some money at the time of reorganization. At the time the Title Company surrendered possession to the Trustee it had on hand a sum in excess of that amount, approximately $10,000, cash and school warrants. We paid $4,400 and some cents of that on receiver's certificates. About $2,500 was paid over to the Central Republic for working capital. The Title Company had not been paid a dime in any fees up to the time of its discharge. I would say the gross collections at that period were in excess of $300,000 for four years. I believe the Title Company was paid less than $3,000. I believe their attorney, Mr. Gaughan, got $300—it was quite reasonable. That just about used up the money. We didn't pay that $4,000 in taxes because the receiver's certificate had been made
882 conditioned on the property remaining in receivership, and it was necessary to get the insurance company to agree to the assumption of the debt by the Trustee, so we had to pay something.

Cody went into receivership in December, 1933. According to my letter of June 4, 1937, to Mr. Woods, the Barton contract expired in July, 1933, and I believe that is correct. I told Mr. Woods that the provisions for payment under that contract had been modified and changed from time to time. Those modifications were never put in writing that I know of. The only agreement in writing that I know of is the Barton agreement and the agreement which I signed on January 5th of 1934. I don't know of any others—aside from the Mateer contracts in 1934.

The Granada Apartments, Inc., was operating the heating plant at the time I signed that contract in January, 1934. The Chicago Title and Trust Company was receiver at that time and I was operating the building for them. I don't believe the Granada Apartments, Inc., has had a great deal to do with the operation. They were always in trouble—with furniture or something.

Cross-Examination by Mr. Woods.

883 The Cody Trust Company had a great deal to do with the operation. The money was never taken to the Cody Trust Company. The building had its own bank account and the money was kept at the bank at the corner of Clark and Diversy until the year 1932. Mr. Older was an employee of the Cody Trust Company and was put in charge of the properties, but the funds were never taken to the Cody Trust Company.

Mr. Wenstrand wasn't on the payroll of the Cody Trust Company but he was there. I had a desk for a couple of months at the Cody Trust Company in 1932, but spent all my time outside. The only properties that Cody had an interest in that I am connected with would be the Arlington and the Granada. I am receiver for a bond issue of theirs in Waukegan, but that cannot be on their behalf. I am the receiver thereof and as such am in full control.

I had accumulated $13,000 over at the Central Republic Trust Company out of the rental receipts from the Granada in August, 1933. I presume I had been accumulating that money since I took over the property December 1, 1931. I did not turn the money over to the Chicago Title and Trust Company as receiver. We had considerable discretion about handling that at that time. I am not sure that the situation is that the Chicago Title and Trust Company did not do anything about the management of the property until after Cody Trust Company went into receivership.

884 I didn't go over to the Chicago Title and Trust Company to get a check for $50 a month. I paid myself. I sent them a statement showing how much was left at the end of the month. They made no objection about that.

The arrangment for the Chicago Title and Trust Company to let this thing be handled by some other people was an arrangement that had been made with the Title Com-

pany by Mr. Hiram S. Cody, to give the property a chance to work out of its difficulties, particularly over this furniture situation. It is quite true that there wasn't any other reason for that receivership except to use it as a weapon in warfare with Pick. In 1934 the Chicago Title and Trust Company was directed to actually take possession because Mr. O'Brien, myself and the Trustee thought that the best move would be to make a conventional receivership out of it, and it was so done. After that I actually turned over the funds to the Chicago Title and Trust Company. The account was banked then. That was approximately from January, 1934, until March. I couldn't be sure about the dates. It is about right that it was just about three months that they were really the receivers. Then it was turned over to the Central Republic Trust Company and the Chicago Title stepped out completely and I went on operating the property as before. I continued so doing until the
885 Court here took charge on the 17th day of May of this year.

There were thereupon offered in evidence as City National's Exhibit A-1 two documents dated October 26, 1936 and one of December 4, 1936 and having to do with the cost of putting a heating plant in the Arlington Hotel. On Mr. Woods' objection, Exhibit A-1 was excluded from evidence, to which an exception was taken.

Witness JOHN J. BICKEL, JR., being recalled by Mr. O'Brien, testified as follows:

Direct Examination by Mr. O'Brien.

City National Exhibit T for identification purporting to be the final report and account of the Receiver of Central Republic Trust Company was prepared by William L. O'Connell, Receiver of Central Republic. Igoe & Flaherty are his counsel. City National Bank and Trust Company did not prepare that account. The books of the Granada from which it was prepared were at the Granada Hotel. The records of the Trustee and all files relating to the account were in possession of William L. O'Connell. Charles H. Albers was his chief deputy in the case of Central Republic Trust Company. I don't know who presented the account to the Superior Court, but I assume Igoe & Flaherty.

I have heard testimony of the various witnesses
886 with respect to feasibility of changing the lobby space so that it might be used for tearoom, dining room or commercial purposes. As I testified before, the experience of hotel operators with commercial space in residental hotels is usually unfortunate. If hotels operate a restaurant or tearoom themselves, they generally lose money. It has been previously testified here that the Surf had a successful dining room. I had Mr. Hubbart call the operator of the Surf to determine how successful it was. It is losing money every month.

I am a director and treasurer of the Park Lane Hotel at Sheridan Road and Surf Street and we have had a dining room problem there for many years. We have tried to keep a tenant in the dining room that will serve satisfactory meals for us and we have waived the matter of rent entirely. She lost money and ultimately had to quit and we have been operating the dining room ourselves because of the demands of tenants. The hotel is managed by Mr. Skillman, a very experienced hotel operator, and experienced in catering, and the dining room lost money. It is my opinion that although the lobby has some waste space that that waste space because of the way it is laid out makes the hotel exceedingly attractive for apartment guests. There are only 18 hotel rooms for transients
887 in the hotel. The remainder of the apartments have kitchenettes or pullmans. That tenancy is permanent. These people for the most part cook their own meals, with the exception of perhaps one night a week or perhaps every two weeks, when they dine out.

Many of those people, as Mr. Woods undoubtedly knows, like to sit around the lobby and organize bridge games. They live at the Granada because of the type of apartments they get and because of the homelike atmosphere of the building and lobby. I firmly believe that entirely aside from zoning problems or restrictions as to what a mortgage Trustee can do in the way of remodeling, that commercial space in that hotel would be a failure and result in loss of income so far as the apartment tenants are concerned. I think the future will prove that my judgment on this is right.

I think the real value of the Granada Hotel property along with the personalty and furnishings is pretty close to $375,000 or $400,000.

I remember the approximately $10,000 in funds on hand

that Mr. Woods asked me about as having been carried in the trustee in possession account for approximately 12 or 14 months. I testified that I had no personal knowledge of it but I did investigate at the bank. Mr. Beckett, who supervises corporate accounts, told me that your of-
888 fice had advised the Trustee that during the pendency of this other 77B case to disburse as little of that fund as possible so that the only disbursements that were made during that period were from the net income of the property and that was applied on taxes.

That money was invested for two or three days on April 1st in Governments. That is a common practice throughout all banks to avoid personal property taxes.

Calling attention to the morning on which I had a conversation with Mr. Woods, Mr. Clarke, and later Mr. Leonard, the only moneys that I can recall that Mr. Woods spoke of was this item in the so-called decree distribution account. The other items were, to the best of my knowledge, not mentioned.

The $400 house fund was furnished by Central Republic as Trustee when it was in possession and the City National when it was in possession.

Cross-Examination by Mr. Woods.

The $400 house fund was taken from the rentals of the Granada as was all of the money that the Trustee had in its trustee in possession account. I do not know without checking the records how much fire insurance the City National had been carrying on this property. I think we carried the full insurable value of the furniture and the full insurable value of the building. It is not a fact
889 that one cannot carry full insurable value and that you have to take 80 per cent. I said that you could carry the full insurable value—not that we did. We excluded, of course, the foundations and basement and such other equipment as would not be inflammable. I have seen the insurance value estimated by our insurance department on the Granada but do not recall how much it is.

I have been to the Granada Hotel perhaps half a dozen times since Central Republic has been in possession. I have been in the Arlington Hotel about the same number of times. It has a relatively small lobby space. I didn't say that the tenants in the Arlington left because the lobby space is small. I say that the lobby space in the Granada is large and attractive. The occupancy of the Arlington

and Granada have been pretty close together. At one time the tenants of the Granada and Arlington had their tea parties and card parties together at the Granada. That was discontinued. To the best of my knowledge that was not the practice when the court Trustee took possession. We separated all of the services and attempted to discourage any intermingling of hotel operations. We carried in the house organ both "Granada Topics" and "Arlington Topics" right up to May, 1937. They contained a list
of the guests and news about card parties and other
890 affairs. I believe we paid a part of the expense on
the Granada Topics but how large a part Mr. Hubbart would know. I don't know. I doubt that the Arlington got the benefit of the extra space which was being used for these card parties, etc. I have never been particularly sold on the "Arlington Topics." Mr. Hall recommended it and I have never interposed any objection but I never thought that it did the Arlington any good. Our experience has proven that since the card parties, dances, etc. in the ballroom of the Granada were discontinued, it has not made a bit of difference in the Arlington. I don't think it would make any difference if the ballroom and all this lobby space were eliminated in the Granada. I don't see how you can eliminate it. It's there. I don't think it was of any great value to our Arlington tenants. Arlington showings are just as good now as they were before.

Hotels generally lose money when they try to run their own restaurants. In order to get a volume in a restaurant, you have to go on the outside. When you do so, you clutter your lobby space up with a lot of strangers—people who have no interest in the building—and your guests resent
that and then they demand that the restaurant be dis-
891 continued or they will move. That sort of restaurant
business can really only exist by catering to parties and through outsiders and they are not desirable in a residential hotel.

We have had the Lakeview Women's Club there for 12 years, but it is an entirely different personnel than a dining room. I don't know whether women are the largest part of the patronage of dining rooms and tearooms.

I have been at the Spinning Wheel out in Hinsdale. There is no question but that it has been built up to its present popularity because of the people who took hold of it and made a success of it. I have heard that only two or three years ago, the Government had all that area closed up because of liquor in that neighborhood and that

these people went out there and built up a tremendous business, but you still have not shown me where that would benefit the Granada any because if you have $75,000 a year in income from your hotel guests and your lobby is overrun by crowds every night, you are liable to lose your $75,000 a year or a substantial part of it for maintaining a business that will pay you perhaps $200 or $300 a month.

I didn't say that the person who operates this property should just let the taxes pile up until there is $40,000 or $50,000 there and that if they try to make use of the
892 space that is there and have it produce and help pay the taxes that they will get in trouble. I have previously testified as to the amount we did pay on taxes. It ran into a very substantial figure—some $30,000, I believe.

I recall that you had court Trustee's Exhibit B with you when you were talking with me and Mr. Leonard on the 27th of August. You showed it to me and Mr. Leonard. I don't remember that the notations in pencil in the corner of the last sheet were there at the time you talked to me. You may have called my attention to those items and said that the total was so much. I don't remember. Both Mr. Leonard and myself examined this document at that time.

Mr. O'Connell took over the closing up of the Central Republic Trust Company. He moved many of the files and records to his own offices. I think that the remnant of Central Republic Trust Company is still over there at 134 South La Salle. Up to the time that Mr. O'Connell took over the closing up of that company, City National were servicing the trust affairs of the Central Republic Trust Company. I had knowledge of and some authority with reference to that.

The final account of William L. O'Connell as receiver—City National Exhibit T—was not made by anyone connected with City National. The account was prepared
893 under the direction of and by employees of William L. O'Connell. I have no doubt they filed the accounts as I had turned them over to Mr. O'Connell. The account is a restatement of the basic data which the City National had prepared. I don't know of my own knowledge whether we made any objection to anything that appears in that exhibit. I don't believe any objections were made. We accepted the report as entered in the Superior Court as final. So far as City National were concerned, there were no objections to be filed to the account. Those were figures that we had accumulated over a long period of time. They were Central Republic figures.

I never discussed with the guests or with the hostess or with other people there in the neighborhood the desirability of renting that space adjacent to the lobby on the first floor. I don't know of my own knowledge but I can assume from looking over the records that Mr. Mateer from the time he built those hotels in 1924 until he lost control of them somewhere near 1930 devoted a great deal of money and time to entertainment for guests of all the hotels in this space adjacent to the lobby. I think he prepared the lobby facilities as a central meeting point for the other two buildings and for others he expected to build. I
894 believe that during the time I operated the hotel people from the other hotels came over there and made use of that space for their card parties and other entertainment.

Redirect Examination by Mr. O'Brien.

The employer's portion of the social security tax is payable annually and the employee's portion monthly. It is the employer's portion that we are holding for the Government. Neither the manager nor other people about the hotel ever discussed with me the renting of the lobby space.

Beginning in March, 1934 when Central Republic went into possession of Granada as Trustee they caused books of account to be set up immediately and assumed, with the assistance of Mr. Hall, all of the responsibilities of direct management. I would like to correct something that Mr. Hall inadvertently said but thought that he was referring to the period when the Chicago Title and Trust Company was receiver. He indicated that during the entire period he has operated the entire property and had complete control. The fact is that he acted as assistant to Central Republic and then the City National and did not have complete control. The Central Republic and then the City National Bank had control. We had Mr. Hubbart assigned to that property. These were our own books which we opened up when we went into possession. The books were set up in accordance with the modern hotel procedure.
895 Our accounts were rendered monthly on both a cash receipts and disbursement basis and accrual basis. A monthly balance sheet was made which consolidated the affairs of the hotel itself with those balances that were in the bank—both the Central and the City. At all times it was possible to strike off a balance sheet and give the

financial condition of the hotel on immediate notice. We employed Barrow, Wade & Guthrie, certified public accountants, to set up the books and audit them monthly. We required Mr. Parker, the manager, to gather his deposits and have them picked up by Brinks Express and deposit them directly in the bank. The operating account in which those deposits were made was under the control of Mr. Hall and checks were counter-signed by either Mr. Hubbart or myself. All purchases were made on orders issued only by Mr. Hubbart, except for supplies like oil and other routine purchases. All disbursements had to be approved and checks counter-signed by either Mr. Hubbart or myself. Payrolls were accompanied by a payroll sheet. Individual checks were written direct to the employees. In general the system was as fool-proof as we could make it. That is approximately the same system that we use in all similar situations.

Mr. Hubbart, together with an organization in my
896 department, supervises exclusively hotel and furnished apartment buildings of which we have only a comparatively few. Most of the properties which we have are three-story walk-ups. Prior to this system we maintained books—ledger sheets which showed at all times the current cash position. Exactly the same records as Mr. Woods has produced here. A renting schedule and other items of policy were fixed by joint conferences with Mr. Parker, Mr. Hall, and Mr. Hubbart. The final approval was entirely in Mr. Hubbart's hands, but only after conference with the other two.

At the time we took possession as Trustee, the Chicago Title and Trust Company was not operating the property directly. They had stated that they would prefer to, but at that time we were operating it through Mr. Hall. I don't recall who was there when we took it over. I remember the Title Company saying that they wanted to operate the property direct but whether they had done so or not I don't remember. Mr. Hubbart would remember that.

The Real Estate Board in its schedule permits a management fee up to 6 per cent for operating properties of this type. We received 4 per cent including Mr. Hall's compensation. We did not make any extra charge for renting or any other service. I believe the compensation of the manager of the building was $200 a month. The gross
897 of the building was about $75,000 a year. Of course, the salary of manager and the other personnel is not

considered in the Real Estate Board's schedule of fees. I believe $2400 a year is about 3½ per cent of $75,000. By paying the trust company 4 per cent and paying the manager 3½ per cent I would figure our management cost was 4 per cent plus the personnel requirement of the hotel.

The Croydon Hotel was owned by Ben Cohen. He paid Mr. Hart from the St. Clair about $7500 a year as manager of that hotel. I don't know whether he paid anyone else 4 per cent at that time, but Mr. Hart at that salary assumed a great deal of responsibility. The Croydon has about 200 units of apartments and transients. It is a combination transient and apartment hotel. That is a bit different from what we have at the Granada and the salary is quite a bit different too. The Croydon is about ¾ transient. It is a different proposition. The dining room of the Croydon is leased—not operated. I think when you have a hotel property you first of all have to have a manager regardless of the management expense in addition to that. I think a hotel property will stand 7½ per cent, including the manager. The Real Estate Board rate as recommended is before taking the manager's service in consideration as a part of the operating expense. It excludes all operating personnel whether the manager, the maids, the housemen, or anything else.

898 The Court: "Do you know anyone who avails himself, if they have an option of availing themselves of it, of the Chicago Real Estate Board—do you know of any man in his right mind, not under legal disability who avails himself of that?"

The Witness: "Yes, I do."

The Court: "Well, who is it?"

The Witness: "Well, George Ortseifen of the Sheldrake, employs Louis Sudler & Company at either 4 or 5 per cent, I don't know which, in addition to the manager."

Witness resuming: I think that hotel is at Windsor and Clarendon. He does that because he does not want the responsibility of all of the buying and so on. He also has plenty to do checking the affairs of the house and the operation and he does not want the money spent by him. He wants to have direct control of it by somebody who knows where it is going. I have no doubt there are some others. If I were given time, I am sure I could locate some.

Recross Examination by Mr. Woods.

I did not say that Mr. Hubbart did not buy the oil. I don't know whether he handled that direct or not or

whether he had Mr. Parker do that. What I meant was routine purchases. When the source of supply was once determined and the price, the ordering of the oil was merely the matter of a telephone call.

399 Looking at court Trustee's Exhibit B I cannot say how it happens that as much was spent for oil between January and May, 1937 as was spent in the entire year of 1935, without seeing all of the vouchers, but I presume there were some carry-over bills from 1936 because it was on a cash receipts and disbursement basis. It is entirely possible that they spent more for 1936 than they did for 1935 because in 1936 the heating season was entirely different than in 1935—between 15 and 18 per cent. An explanation of that difference is not that it was just a matter of a phone call and that I paid no attention to it. I don't know how full the tanks were kept but I know that Mr. Parker and the engineer checked every bill. I do not think that it is true when you keep tanks full of oil that the oil settles down and forms layers in the tank. They have to be cleaned out at regular intervals.

The boilers were not in bad condition when it was turned over to you. There is nothing unusual about the fact that last spring at the end of the heating season engineers had to clean out the boilers and make repairs. When the oil reaches the building the quantity is checked.

Court Trustee's Exhibit O for identification is the kind of daily report we got from the hotel. I did not get these. Mr. Hubbart did. We received them each day for the

900 preceding day's business. We knew by afternoon of any day the exact financial situation at the hotel at the close of business the day before. We, no doubt, knew on May 18 of this year exactly the situation at the close of business on May 17. I didn't say that we could at all times determine the balance on immediate notice and said that within a very short time we could at any time draw off a balance sheet, if necessary. You don't close your books every day—not until the end of the month. I have no doubt that you don't do that either.

The sheet shows the exact situation every day as far as the cash account is concerned, but that sheet does not show the liabilities. By liabilities I mean the operating expenses accruing from day to day—bills which have not been billed yet. We didn't incur any bills after the 17th of May. I am talking about prior to that time. It was necessary to wait from the 17th of May until the 25th of August to get in these additional bills. We called for the bills immedi-

ately. I think we have been over that before. There were numerous conversations between you and Mr. Hubbart, between you, and Mr. O'Brien, and it took Barrow, Wade, & Guthrie a considerable period due to vacations and so on to get the audit up. It was not deliberate stalling. It was hard to get things done in the summer time.
901 Barrow, Wade & Guthrie gave us an audit for the month of May on the 1st of June but that had to be consolidated with all previous months.

GARY YOUNG called as a witness testified:

Direct Examination by Mr. O'Brien.

I live in Evanston and am General Manager of the contract division of Kroehler Manufacturing Company. I was associated with that company in 1933 and have been since 1928. That company manufactures both high-grade and medium-grade furniture case goods, which is bedroom and dining room. Prior to 1928 I was with Marshall Field for nine years and two years in business for myself, always furnishing hotels. I was familiar with the market prices of furniture during 1933, both in buying and selling. I went through the Granada Hotel during July, 1933. Mr. Murphy of Chicago Seating Company accompanied me and in going through the hotel, we had Mr. Parker through the first two floors and the housekeeper, Mrs. Gahland, go through the balance of the rooms to identify merchandise that might belong to tenants. Excluding tenants' furniture and property and excepting mechanical equipment, Mr. Murphy and I made an inventory of all the furniture, furnishings, and equipment in the Granada, but included all movable furniture and also included the kitchen
902 and china cases, in-a-dor beds and carpeting and ozite in the premises. We set the inventory down on paper and determined the value of all the property in place at that time. We based its value on cost of replacement in 1933 less its depreciation. We furnished Mr. Edward Hall a report. I have a copy of the report with me. Both Mr. Murphy and myself made this inventory and appraisal because the bank called Mr. Murphy and I have no connection with the Chicago Seating Company at all and Mr. Murphy called me in as a co-appraiser on Granada so that the appraisal is a joint appraisal of Mr. Murphy and myself.

City National's Exhibit A-3 for identification is a true and correct executed copy of that appraisal and inventory.

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 420, inclusive, contain a true copy of volume I of the printed record printed under my supervision and filed on the fifteenth day of November, 1939 in the following entitled causes:

Causes Nos. 6986, 7060.

In the Matter of Granada Apartments, Inc., Debtor.

City National Bank and Trust Company of Chicago, etc., *et al.*,
Appellants,

vs.

Weightstill Woods, Court Trustee, *et al.*,
Appellees,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 23rd day of July, A. D. 1940.

Kenneth J. Carrick,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

(Seal)

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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 281

WEIGHTSTILL WOODS, COURT TRUSTEE,
PETITIONER,

vs.

CITY NATIONAL BANK AND TRUST CO., OF
CHICAGO, ET AL.

No. 282

WEIGHTSTILL WOODS, COURT TRUSTEE,
PETITIONER,

vs.

CITY NATIONAL BANK AND TRUST CO., OF
CHICAGO, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 25, 1940.

CERTIORARI GRANTED JULY 25, 1940.

OCT 14 1940

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No.....

IN THE MATTER OF GRANADA APARTMENTS, INC., A CORPORATION, DEBTOR.

WEIGHTSTILL WOODS, COURT TRUSTEE, ET AL.,
Petitioners,

vs.

ITY NATIONAL BANK & TRUST COMPANY OF CHICAGO, ETC., ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Blank Page

INDEX.

Index to printed record of proceedings in U. S. District Court i

Clerk's certificate to Volume I of printed record of proceedings in U. S. District Court.....420A

Clerk's certificate to Volume II of printed record of proceedings in U. S. District Court..... 839

Index to proceedings in U. S. Court of Appeals:

- Placita 841
- Petition for leave to appeal, No. 6986..... 842
- References to pages of printed record which contain Exhibits, A, B, C, D, E, and F, attached to petition for leave to Appeal..... 851
- Reference to pages of printed record, which contain Assignment of Errors, cause No. 6986..... 852
- Appearance for appellants, No. 6986..... 853
- Answer to Petition for leave to appeal, No. 6986. 853
- Reference to pages of printed record which contain order of Court of Appeals allowing appeal, No. 6986 .....853A
- Order of July 1, 1939, approving appeal bond, No. 6986 854
- Appeal bond, No. 6986 855
- Reference of printed record which contain citation, No. 6986 860
- Excerpts from short record filed on July 19, 1939, No. 6986 860
  - References to pages of printed record which contain order of June 20, 1939 and order or decree of May 2, 1939 860
- Praecipe for record filed June 29, 1939..... 861

Praecipe for short record filed on July 18, 1939 868
Certificate of Clerk 870
Motion for order extending time for filing transcript of record, No. 6986 870
Order of July 21, 1939, extending time for filing transcript of record, No. 6986 873
Appearance for Court Trustee, No. 7060 874
Appearance for appellant, No. 7060 875
Motion of appellants to consolidate appeals 6986-7060, etc. 876
Exhibit A—List of documents to be printed in consolidated transcript of record 880
Counter-motion of Court Trustee to dismiss appeal 6986 and answer and objections to the appeal and all motions and petitions by the appellants. 886
Suggestions and authorities in support of counter-motion 890
Motion by Court Trustee that certain appellants be dismissed out of the proceedings, etc., No. 7060 893
Suggestion in Support of motion 894
Answer of appellants to Court Trustee's motion to dismiss appeal, No. 6986 896
Answer and counter-suggestions of appellant to motion by Court Trustee to dismiss appeal as to certain appellants, No. 7060 901
Exhibit A—Order of District Court entered Oct. 22, 1937 905
Exhibit B—Order of District Court entered Oct. 21, 1937 911
Reply by Court Trustee to counter-suggestions by appellants; and confirmation by Court Trustee of his motion to dismiss appeal No. 6986..... 913

Reply by Court Trustee to answer and counter-suggestions by appellant; and confirmation by Court Trustee of his motion to dismiss appeal No. 7060 as to certain appellants 916

Order of Oct. 4, 1939, denying counter-motion of Weightstill Woods, as Court Trustee, to dismiss appeal No. 6986 918

Order of Oct. 4, 1939, denying motion of Weightstill Woods, as Court Trustee, to dismiss certain appellants out of the proceedings, without prejudice, etc., No. 7060 919

Order of Oct. 4, 1939, consolidating appeals No. 6986-7060, etc. 920

Renewal of counter-motion to dismiss appeal No. 6986 and answer to motion for consolidation filed by Weightstill Woods, Court Trustee, No. 6986. 923

Renewal of motion that certain appellants be dismissed out of the proceedings, No. 7060..... 939

Answer and response of City National Bank, etc., et al., to Court Trustee's renewal motion, No. 6986 943

Order of Nov. 27, 1939, denying renewed motion to dismiss appeal No. 6986 and denying renewed motions to dismiss appeal No. 7060, as to certain appellants, etc. 953

Hearing and submission of appeals 6986-7060, Feb. 23, 1940 954

Opinion by Major, J., filed March 26, 1940, Nos. 6986-7060, 7061, 7186 and 7036 955

Order or decree, No. 6986, entered Mar. 26, 1940.. 970

Order or decree, No. 7060, entered Mar. 26, 1940.. 971

Petition for rehearing filed April 10, 1940, Nos. 6986, 7060 and 7061 973

Motion by Court Trustee that if rehearing is granted, he be granted leave to file a summary of evidence, Nos. 6986, 7060 and 7061 991
Suggestions to support motion 992
Answer to petitions for rehearing, Nos. 6986-7060, 7061, 7186 and 7086 996
Order of May 7, 1940, denying for petition for rehearing, Nos. 6986, 7060 and 7061 999
Notice, proof of service and motions by Court Trustee to stay mandates, Nos. 6986, 7060 and 7061 1000
Suggestions by Court Trustee 1002
Order of May 16, 1940, staying mandates and directing Clerk to transmit to Supreme Court the records sent to this Court by a special order, Nos. 6986, 7060 and 7061 1003
Notice, proof of service and motion by Court Trustee to stay mandates an additional forty days .. 1004
Suggestions by Court Trustee 1005
Order of June 15, staying mandates additional forty days, Nos. 6986, 7060, 7061, and 7086 1006
Motions to dismiss appeals for want of jurisdiction; and motions to retax costs filed by Weightstill Woods, Court Trustee, Nos. 6986 and 7060. 1007
Answer of appellants to renewed motions of Weightstill Woods, appellee, to dismiss appeals, etc. 1025
Order of July 3, 1940, denying motions of Weightstill Woods, Court Trustee, to dismiss appeals and retax costs 1033
Praecipe for record filed July 15, 1940 1034
Clerk's certificate 1037

Blank Page

IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

Nos. 6986 and 7060

IN THE MATTER OF GRANADA APARTMENTS, INC., A CORPORATION, DEBTOR.

CITY NATIONAL BANK & TRUST COMPANY OF CHICAGO, ETC., ET AL.,
Appellants,

vs.

WEIGHTSTILL WOODS, COURT TRUSTEE, ET AL.,
Appellees.

Counsel for Appellants:
MR. VINCENT O'BRIEN,
MR. JOHN MERRILL BAKER,
MR. TRACY WILSON BUCKINGHAM.

Counsel for Appellees:
MR. WEIGHTSTILL WOODS.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

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INDEX.

Placita	1
Order of May 17, 1937, approving petition as properly filed, consolidating petitions, appointing temporary trustee, etc.	2
Notice to creditors and stockholders	5
Order of May 20, 1937, approving bond of temporary trustee	6
Intervening petition of Charles S. Tuttle, et al., as a Protective Committee	7
Exhibit A—Deposit agreement dated April 25, 1933	9
Order of May 24, 1937, granting leave to Committee to file intervening petition and to file instanter its plan of reorganization, etc.	51
Plan of reorganization filed by Protective Committee	66
Proof of claim of City National Bank & Trust Co. of Chicago, as Trustee	79
Proof of claim of Bondholders' Committee	82
Objections by Court Trustee to claims filed with Special Master	84
Report of Referee as Special Master upon filing of claims and objections thereto and acceptances of plan	85
Schedule of Claims and Interests of Creditors and Stockholders, etc.	89
Order of July 14, 1937, relative to claims, etc.	97
Order of July 12, 1937, continuing Wightstill Woods as temporary trustee until further order of Court, etc.	101
Acceptance of plan of reorganization	101
Order of July 14, 1937, confirming plan of reorganization	102

Order of July 15, 1937, amending order confirming plan of reorganization 110
Order of Aug. 30, 1937, granting leave to City National Bank & Trust Co. to file instanter its account..... 111
Report and account of City National Bank & Trust Co. as Trustee 111
Answer and counterclaim by Federal Trustee to petition of City National Bank & Trust Co. for approval of accounts, etc..... 126
Suggestions (objections) by Federal Trustee to surcharge and falsify accounts and deny all claim by City National Bank & Trust Co., its Committee and their counsel, and petition by Federal Trustee for general relief against respondent..... 127
Order of Sept. 14, 1937, granting leave to City National Bank & Trust Co. successor trustee, to file amendment to proof of claim, etc..... 140
Amendment to proof of claim of Successor Trustee.... 140
Order of Sept. 14, 1937, granting leave to Weightstill Woods, Trustee, to file instanter petition to determine inter-hotel services 142
Order of Sept. 14, 1937, granting leave to Trustee to file instanter a petition to determine real estate taxes, etc. 142
Petition by Court Trustee to have determined compensation for services as to Arlington Hotel..... 143
Exhibit 1—Notice by Temporary Trustee dated June 15, 1937..... 145
Exhibit 2A—Letter, July 28, 1937, Woods, Federal Trustee, to City National Bank & Trust Co..... 146
Exhibit 2B—Letter, Aug. 13, 1937, The Arlington, Inc., to Woods, Trustee..... 147
Exhibit 2C—Letter, Aug. 14, 1937, Woods, Federal Trustee, to City National Bank & Trust Co..... 148
Exhibit 2D—Letter, Aug. 16, 1937, The Arlington, Inc., to Woods, Trustee..... 149

Exhibit 2C—Bill of Weightstill Woods submitted to City National Bank & Trust Co., Aug. 16, 1937 150
Petition of Defrees, Buckingham, Jones & Hoffman for allowance of counsel fees 151
Affidavit of Vincent O'Brien 153
Exhibit A—Statement of services rendered 154
Petition of Charles S. Tuttle, et al., as Bondholders' Committee, for allowance of reasonable expenses ... 156
Exhibit A—Statement of expenses incurred 164
Answer of City National Bank & Trust Co., as Trustee, to counterclaim of Weightstill Woods, Trustee 165
Answer of The Arlington, Inc., to the petition of Weightstill Woods, Trustee 169

CONDENSED STATEMENT OF EVIDENCE.

Colloquy 171
Witnesses for Court Trustee:
Bickel, John J., Jr. 183, 332
Clarke, Philip R. 335
Croxton, Hugh W. 268
Hubbart, J. Roy 173
Lenz, J. A. 262
Leonard, Arthur T. 230, 337
Loveless, Wait Reynolds 443
Parker, Claude S. 257, 293, 452
Schott, William H. 250, 280, 320, 450
Sturm, William G. 201
Tilney, Stanley D. 243
Toon, W. E. 328
Tuttle, Charles S. 317
Woods, Weightstill 342, 453
Witnesses for City National Bank and Trust Co.:
Bickel, John J., Jr. 411
Brittain, Joseph K. 367

Brooke, Irving E. 306, 439
Dauber, Oscar W. 389
Hall, Edward 402, 442, 461, 463
Hertzman, Irving L. 295
Hubbart, J. Roy 399
Johnson, Arnold M. 421
Kirkeby, A. S. 275
Mackie, Frederick John 397
McDonnell, Joseph I. 378
Murphy, William J. 421
Schanfarber, A. J. 358
Smith, T. P. 460, 462
Young, Gary 420

Witnesses for Bondholders' Committee:
Boerger, C. F. 464
Sturm, William G. 468

Witness on behalf of petitioners, Defrees, Buckingham, Jones & Hoffman:
O'Brien, Vincent 473

EXHIBITS OF COURT TRUSTEE.

Exhibit B, Summary analysis of cash accounts from January 4, 1935 to May 17, 1937 of the Granada Apartment Hotel 516
Exhibit J, intervening petition of City National dated January 22, 1935 521
Answer of C. S. Tuttle, et al., to the original petition of Sam Harris, et al. 525
Exhibit O-1, Release dated August 18, 1933 of International and Industrial Securities Corporation 529
Exhibit O-3, Granada Hotel appraisal of carpet, ozite, beds and cabinets made by J. A. Lenz dated September 24, 1937 531

Exhibit R, Report of William A. Schott dated September 10, 1937 531
Exhibit R, Memorandum of understanding between Chicago Trust Company and Cody Trust Company in regard to Granada bond issue 536
Exhibit U, Agreement dated October 1, 1927 between Granada Hotel Corporation and Frank E. Barton 537
Exhibit V (abbreviated), Circular of Chicago Trust Company 516
Exhibit V (abbreviated), Appraisal of Granada by Chicago Trust Company and Cody Trust Company. 540
Exhibit Y-1, Cashier's check of City National dated May 25, 1937 541
Exhibit Y, Letter May 25, 1937, Defrees, Buckingham, Jones & Hoffman to Weightstill Woods 541
Exhibit AA, Letter October 11, 1937, W. R. Loveless to Weightstill Woods 543
Exhibit BB, Comparison 550
Exhibit 2, Letter September 29, 1937, The Arlington, Inc., to Weightstill Woods 551

EXHIBITS OF CITY NATIONAL BANK AND TRUST CO.

Exhibit G, Transcript of proceedings in District Court before Judge Barnes on May 15-17, 1937 581
Exhibit J (abbreviated), First Mortgage Trust Deed dated September 21, 1928 from Granada Hotel Corporation to Chicago Trust Co. 505
Exhibit K (abbreviated), Chattel Mortgage 509
Exhibit L (Description of), Chattel Mortgage Note secured by Chattel Mortgage, City National's Exhibit K 510
Exhibit M (abbreviated), Assignment dated January 3, 1935 of Chattel Mortgage and Note 510

Exhibit N, Decree of Sale entered in foreclosure proceedings in Superior Court of Cook County, Illinois, on December 18, 1936 511
Exhibit O, Petition of Central Republic Trust Company in Superior Court of Cook County, Illinois 608
Exhibit P, Order entered August 11, 1933 in Superior Court of Cook County, Illinois, re Receiver's Certificate 613
Exhibit Q, order entered August 23, 1933 in foreclosure proceedings 515
Exhibit R, Order entered March 16, 1934 in Superior Court of Cook County, Illinois 619
Exhibit S (abbreviated), order entered November 30, 1935 in foreclosure proceedings taxing Master's fees as costs 515
Exhibit T (abbreviated), Order entered February 11, 1935 in Superior Court of Cook County, Illinois re approval of final account and report of William L. O'Connell, Receiver of Central Republic Trust Company 621
Exhibit U, Agreement dated January 1, 1933 between Granada Apartments, Inc. and Warren-Hart Apartments Building Corporation 626
Exhibit W, Report dated October 7, 1937 of O. W. Dauber 627
Exhibit Z, Agreement dated February 9, 1924 between Arlington Apartment Building Corporation and Mateer Hotels, Inc. 632
Exhibit 1 (abbreviated), Portions of decree entered January 15, 1932 551
Exhibit 2, Memorandum dated January 31, 1934 of Samuel R. Lewis 561
Exhibit 3, Report dated August 14, 1929 of Samuel R. Lewis 562
Exhibit 4, Report dated January 31, 1934 of Samuel R. Lewis 570

Exhibit 5, Heating, water and refrigeration costs.... 575
Exhibit 8, Report dated September 21, 1937 of Irving E. Brooke 504-577
Exhibit A-3, Appraisal dated July 31, 1933 by Chicago Seating Company 640
Exhibit 2, Charges and credits to Lincoln Park Manor with respect to heat, water and refrigeration, years 1930 to 1936, inclusive..... 646
Exhibit 3, Charges and credits to Arlington in respect of heat, water and refrigeration, years 1930 to 1936, inclusive 649
Exhibit 4, Heat, refrigeration and water costs..... 652
Exhibit 5, Excerpts from special report December 31, 1929 by Hotel Audit Bureau..... 652
Exhibit 6, Granada heat, light, power and refrigeration costs, month of December, 1930 and year ending December 31, 1930..... 653
Exhibit 7, Granada Apartment Hotel operating expenses, year 1931 654
Exhibit 8, Granada Apartment Hotel heat, light and power expenses for certain years..... 655

Suggestions and objections of City National Bank and Trust Co. et al. to decree, findings of fact, and conclusions of law drafted by the Court Trustee..... 722
Transcript of proceedings before Judge Barnes on July 14, 1938..... 761
Findings of fact and conclusions of law, filed May 2, 1939 769
Order of decree entered May 2, 1939..... 794
Notice of appeal..... 796
Statement of points relied upon?..... 799
Certificate of Clerk of mailing copies of notice of appeal 814

Order of June 20, 1939, continuing cause to November 16, 1939, for final decree 815
Certificate of Clerk to transcript of record 816

PAPERS FILED AND PROCEEDINGS HAD IN THE U. S. CIRCUIT COURT OF APPEALS.

Assignment of errors (case No. 6986) 817
Order of June 22, 1939, allowing appeal (case No. 6986) 832
Order of Oct. 4, 1939, consolidating appeals Nos. 6986 and 7060 etc. 832
Citation (case No. 6986) 834

WILLIAM J. MURPHY called as a witness testified as follows:

Direct Examination by Mr. O'Brien.

I live at 4521 North Rockwell and am in the furniture business with Chicago Seating Company and I have been with them since 1929. Its business is hotel contractors and institutional contractors. I am President of the company. Its business is furnishing and equipping hotels and institutions, and that was its business in 1933.

I heard Mr. Young's testimony this morning and assisted and collaborated with Mr. Young in making the in-
903 ventory and appraisal which he mentioned. Mr. Young and Mr. Parker and the housekeeper of the Arlington and of the Granada and myself went through the Granada Apartments. We made an inventory of all items of personal property in the premises other than tenant-owned property. We then furnished a report to Mr. Edward Hall signed by me and by Mr. Young jointly. The report is City National Exhibit A-3 for identification. The appraisal as set forth in the report is on the basis which Mr. Young testified.

Thereupon Mr. O'Brien offered City National Exhibit A-3 for identification in evidence to which the court Trustee objected on the ground that it was the wrong measure of damages and the objection was sustained.

ARNOLD M. JOHNSON called as a witness, was sworn and testified as follows:

Direct Examination by Mr. O'Brien.

I live at 8124 Ingleside avenue, Chicago, Illinois, and am employed in the Reorganization Division of the Trust Department of the City National Bank and Trust Company of Chicago. I was formerly with Central Republic Trust Company from October, 1931 down to the time of its closing.

In the Reorganization Division I am Secretary of
904 the various bondholders' committees for the issues underwritten by Central Republic Bank and Trust

Company and predecessor institutions. That includes the Granada issue. The Granada issue first came to the attention of my division about March, 1932. They had defaulted in principal and interest on March 1, 1932. Practice in respect of defaulted issues underwritten in whole or in part by any of the predecessor banks was to make a very complete investigation of the situation in respect to the property and the default and then consideration was given to what should be done and the possibility of having formed a committee. A committee consisting of C. S. Tuttle, W. G. Sturm, Lewis Riddle, and E. S. Clark was formed in the Granada case. Mr. Clark later went in business in California and Mr. E. A. Kilmer of Elkhart, Indiana took his place, and Mr. Albert Peterson was also added as a member of the committee so that there are now five members. The committee was set up in April, 1933. This matter first came to my personal attention within a few months after I came into the bank in the beginning of 1932. A letter asking for deposit of bonds was sent out I believe about May, 1933.

In order to get facts, we had the property examined carefully by an appraiser and a very complete report made as to the condition of the building and the possibilities
905 of the property from an earnings standpoint. We made a check of the tax situation, figuring the taxes, penalties, interest, and costs, investigated the loan itself—that is, the default and the mortgage and its term and provisions, examined the indenture, and did all the usual work which you would go through to attempt reorganization on a defaulted bond issue.

There were a large number of issues underwritten by Central Republic Bank and Trust Company and its predecessor institutions and in 1931, consideration was given to the best method of handling them. It was not thought that it would amount to quite as much work as it eventually did and along about the end of 1931 a number of people were employed in what we call the "Reorganization Division." I was one of those individuals. During the first six months of 1932, the department was expanded considerably as there were quite a few defaulted issues and conditions were not improving. The reorganization division has varied in size of personnel, but it is about as follows: There were as many as five men handling reor-

ganizations and each man would be assigned a number of loans and it would be his duty to make a very careful examination of all the facts as to the property and the default and he would follow through from a reorgani-
906 zation standpoint to make recommendations to the committee and put things in a concrete form and to make recommendations as to a plan of action or a plan of reorganization. I was in charge of those men.

We had to have what we called a "Customer Contact Department" because of large numbers of bondholders coming in and asking about issues—mostly issues that were already in default. We had two men who for some time did nothing but handle correspondence, mail was so heavy with inquiries. We had two men and for a time three men who did nothing but talk to bondholders who came in and gave them as much information as they could as to the default and the circumstances surrounding the default, the taxes, the earnings of the property, and what we expected to do. We had a personnel of either two or three men in the Legal Division whose work is to check the various papers and be a contact point between the various lawyers used in the cases. A number of law firms necessarily had to be used because there was such a large number of issues and they would advise those reorganization men and answer questions that the bondholders might ask specifically and which the reorganization men could not answer.

We had, of course, Mr. Tuttle and Mr. Sturm who were in a full-time executive capacity in the Reorganization Division and whose advice could be had at any time
907 by the reorganization men or anyone in the department.

The decision on a policy or plan would be made by the entire committee. Mr. Tuttle did not have anything to do with it alone but as a committee man he did.

By "Mr. Tuttle as an executive" I mean of the reorganization committee itself to help the men out. He was an older man with a vast amount of real estate experience and the men all felt that he could give them advice on real estate problems. In addition the bank made its entire facilities available to the division and we did not have to maintain separate departments as for instance, the auditing division and the files—there was a tremendous amount of filing work—and the general bookkeeping, messenger

service, and so on. Counting the secretaries, stenographers, and typists, the average would be from 25 to 30 employees, not including the general services of the bank, like auditing. When the Granada matter came to my attention, we checked to see that the income was sequestered. We found on investigation that a partial bill of foreclosure on a second mortgage had been filed in, I believe, 1930, with Chicago Title and Trust Company acting as receiver. The set-up under the receivership was a little different than ordinary. We found that a Mr. Hall was checking the property for the Chicago Title and Trust Company
and was most familiar with its operations and that
908 the court orders provided for the income to be deposited with the Chicago Title and Trust Company as receiver. When we checked this condition in March and April, 1932, our most immediate concern was that it involved a second mortgage and that the income would not be sequestered and used on a second mortgage or any other mortgage that would not be beneficial to the first mortgage. We were informed at that time by counsel that the Trustee was a party to the foreclosure action in such a way that no income could be disposed of except that it would be used for the benefit of the first mortgage bondholders—that is, it might be paid on taxes or insurance or spent on the property. It would have to eventually go to the bondholders, probably to the Trustee under the first mortgage.

That condition of that receivership continued until a complete foreclosure was filed. I believe that was after the middle of 1933 and the receivership, as I understand it, was extended to the first mortgage, but the arrangement for the income and the deposit of receipts with the Chicago Title and Trust Company continued and Chicago Title and Trust Company was really not active in the management until a later date. The court order had not provided for any direct management and it was until, I guess, the end
of 1933 that Chicago Title and Trust Company was an
909 active receiver—that is, managed the property. That was about November or December, 1933 when the Cody Trust Company went into receivership and I remember there was considerable upheaval in trying to find out just where things did stand because the Cody Trust Company had sold about 60% of the bonds and was representing the most bondholders.

Chicago Title and Trust Company were active in the receivership and managing the property until about March

of 1934 and about that time we had numerous conferences as to the possibility of the Trustee taking possession and finally a court order was entered because all parties agreed on a Trustee in possession and then Central Republic did take possession. That was about March or it might have been April, 1934, and Mr. Gordon Bonner was assigned to the Granada by me. He is no longer with our organization, but left some time ago. A check-up was made of the title situation so that data could be assembled for the proposal of a plan. We obtained complete information on the property and Mr. Bonner tried to follow through all the junior interests at the time and it seemed that the principal problem was in the second mortgage and in the preferred stock that was outstanding. The common stock we were always led to believe could be brought into some plan of reorganization but the second mortgage in the amount of $350,000, I believe, was scattered and
910 pledged at different banks and the preferred stock was scattered and it was probably one of the most complicated junior title situations, if not the most complicated, that we had out of some 400 issues. The title situation during that period was about the same that it appears to be in this proceeding. It remained the same right on through for a number of years. I would say every six months something would come to a head and we would feel that we were getting close to getting the junior interests lined up. Ordinarily, it was Elof Wenstrand who spoke for the junior interests. He is the party who the court finally determined here was not entitled to the stuff on deposit with Fred Rathje.

Wendstrand was acting for a syndicate that was endeavoring to work out a deal with the Granada and we knew it was for the Arlington and the Lincoln Park Manor besides the Granada. Our information was that Wenstrand's group also controlled the title to the Manor and also the furniture. Prior to enactment of 77B, if the issue was a smaller one, say anything up to $100,000 or $150,000, there was frequently the possibility of working out an extension if the property was in good condition and the owner could put up some money.

In this type, we had to resort to a foreclosure—either complete or what we called foreclosure with an agreed plan of reorganization. By complete foreclosure I mean
911 that if we could not obtain the cooperation of all the junior interests so that the title was controlled for the

purposes of making a redemption from the foreclosure sale, we would have to put out a complete foreclosure plan, which was nothing more or less than getting as many bonds on deposit as we could and in making a bid at the foreclosure sale of the approximate value of the property and going through the redemption period of fifteen months and acquiring title at the end of the redemption period.

We considered a full foreclosure plan of reorganization in this case, but never carried it out because there was outstanding altogether about a half million dollars of unsubordinated first mortgage bonds and 60% of the bonds were sold by the Cody Trust Company and about 40% by the Chicago Trust Company. The bondholders were scattered and we were never able to secure a high deposit of bonds. We reviewed the lists of bondholders time and again and did everything we could through Cody Trust Company to try to get all bonds deposited and it is one of the few cases where we have been unable to get deposits in excess of 90%. Our deposits averaged 95 to 100%. At the time of the confirmation of the plan here, there was less than 2/3 of the bonds on deposit—about 60%, I think, many coming from nondepositing bondholders. In this case it was absolutely impossible to finance a fore-
912 closure sale with that deposit of bonds because of the tax situation and furniture situation. If we had to make a bid at a foreclosure sale on an appraised value of the property, we would have had to raise cash for about $200,000 of first mortgage bonds in order to bid them out at a foreclosure sale.

The other mode—the agreed plan of reorganization—was dependent upon the consent of all of the junior interests. At the time of the execution of such a reorganization agreement we had the reorganization agreements and contracts signed and everything pertaining to the junior interests in the title has to be put up in escrow with the agreement signed by the junior interests and the bondholders' committee. I tried to get the junior interests for the purpose of such an agreement on innumerable occasions but were never able to get all of them in. We even went so far as to consider forgetting the preferred stock and common stock and trying to get in all of the second mortgage interests on the theory that we could make redemption even controlling the second mortgage, but we could not even get that.

Consideration was given to a bid by the Trustee for the

benefit of all the bondholders. All the committees started talking about the Trustee bidding at the foreclosure
913 sale for the benefit of all of the bondholders and we thought, of course, we had the solution to a lot of our problems because the major difficulty was bidding out non-depositors and we took up and discussed it carefully. We had counsel in and had numerous discussions and even went so far that in some manner the foreclosure bill was amended to provide for the Trustee to bid at the foreclosure sale because after we consulted our attorneys we were told that that would be the next step to take to place us in a position for the Trustee to bid. There was an opinion by the Appellate Court of the First District on that subject at about that time. The Straus case. Then a decision was made by the Supreme Court which I always understood did provide that the Trustee under a mortgage deed has the right to bid at a foreclosure sale if the trust indenture has specific powers on that point. But in our case, the indenture did not have specific authority in the trust deed to bid and as a result of that decision we were thrown out of the possibility of considering having the Trustee bid at the sale. So we were right back where we started from as far as the reorganization plan was concerned. About the end of 1936, there was activity in connection with the lining up of these junior interests and Mr. Wenstrand and his group was actively negotiating for an agreed plan of reorganization. There were quite a few people in at the time because there were a number
914 of groups interested. There was Fred Rathje, Frank Rathje, and the heirs to the Ingersoll interest, Elof Wenstrand and William Lodwick. Mr. Lodwick was a lawyer. He was working with Vernon Loucks on behalf of the Ingersoll heirs. Mr. Wenstrand was buzzing around this picture ever since we were in the situation. He was never able to get financing to carry out the schemes for getting these properties until he got this Mr. Ingersoll, an older man, to finance him. It seems they went ahead and picked up various junior interests—some of the second mortgage and preferred stock—and they got all of the common stock, as we always understood. About the time that they had things pretty well gathered together, Mr. Ingersoll died and that brought into the picture the heirs of the Ingersoll Estate whom Mr. Loucks represented. Wenstrand had to go out and get assistance because the Ingersoll heirs were not willing to let a lot of money go

out of the Ingersoll Estate into the Granada situation and go further than they were already in it.

In late 1936 it looked to the committee as though Mr. Wenstrand could get these interests lined up for the purpose of a plan. We were finally confident that we were going to get all the junior interests lined up and working on an agreed plan of reorganization.

I recall the old bankruptcy originally instituted at Danville, Illinois, in March, 1935. We gave attention to that at the time. We held meetings and talked about the
915 involuntary petition that had been filed and consulted our attorneys in the case and the question came down to one thing—that is, whether we could get a good title. As a committee we had never proceeded with any reorganization where we could not get title because our outlook in reorganization has been that the ultimate object is to liquidate real estate that is in the Trustee; complete the plan of reorganization and then liquidate that through a sale of the property at the earliest possible time when a good price can be obtained. We had hoped as a matter of fact that we could go ahead on a 77B proceeding, but we were informed by counsel that they had talked to both Mr. Herbert and Mr. Oshe of the Chicago Title and Trust Company and received very definite opinion that unless the Granada Apartments, Inc. came into the 77B proceedings and permitted themselves to be a party to the suit that the 77B proceeding would be invalid, and that we would not get good title. Based on that information, we were, of course, forced to register objections to the 77B proceedings because we did not believe they were good.

Frank Rathje was approached by this group as to the handling of the finances for acquisition of the properties —that is, the Manor, Arlington, and Granada, but we found out that Mr. Rathje was interested in financing the acquisition of the properties only if the three of them were kept together as a unit.

916 They proposed to make a low bid for the bonds and acquire the first mortgage bonds on the three issues and time and again they took it up with the committee, but the prices they always mentioned were ridiculously low and of course, the committee would not consider it. They were not even willing to pay a reasonable price based on an appraisal less depreciation or any other fair method of arriving at a value. By "they" I mean the Wenstrand group. That situation resulted

in special treatment of the Arlington because when in late 1936 it looked as if we were going to work out an agreed plan with the junior interests, we were also very active on the Arlington situation.

The Reconstruction Finance Corporation controlled the title to the junior interests' furniture on the Arlington and we had tentatively agreed with them on an all-stock plan of reorganization. They were to receive 12½% of the stock of a new corporation to be formed for acquisition of the Arlington property in return for both junior interests and furniture. About the end of 1936 when we were dealing with the RFC it constantly appearing that we were not going to get cooperation from the junior interests and that in effect we were probably being stalled along and knowing that Frank Rathje had been interested in financing only if the three properties were
917 kept together, we were afraid that this group would get to the RFC and acquire the junior interests which would mean then that we would be in a delicate situation on the Arlington as well as the Granada. About that time, I went over to the RFC and pressed this matter and Mr. Sturm and myself went over there and talked to the representative of the RFC two or three times. We talked to Fuller Gregson and to Mr. Murcheson, manager of the office. Of course, at that time, we immediately pressed the plan of reorganization of the Arlington and it was in that matter that they had been approached with reference to sale of the junior interests. As a matter of fact, notices were sent out to either three or four different groups interested in the Arlington to buy out the RFC requesting them on or before a certain date to make a bid for the junior interests. That included the RFC's holdings in the Granada of some of the unsubordinated first mortgage bonds and some of the subordinated and some of the second mortgage bonds. These notices went out and bids were actually received in sealed envelopes and opened, I believe, by Mr. Murcheson, representative of the RFC office. It seems there had been talk of a price for the junior interests and the furniture in an amount which was somewhat larger than the highest bid received. Bids were received from three different groups
and the RFC rejected all of the bids because they
918 were less than the price that had been talked about and they were also afraid that there might be some collusion between two of the groups as to price and if they held off, they would get a better price.

I remember that you talked to Mr. Gallagher, head of RFC here, at an earlier time. You talked to Mr. Gallagher and Mr. Sturm and myself talked to Mr. Gregson and we had an agreement on this plan of reorganization and we urged them not to close any deal for the sale of the junior interests and explained very frankly to them as to this Granada situation. They agreed to go ahead with the plan of reorganization, so we hurriedly got them to deposit all their securities under the plan and execute the contracts. They got the approval of Washington and once everything was put up in escrow and the contract signed, we had the Arlington plan of reorganization in form and figured we could proceed to consummate it.

That was the last of the Rathje deal except, I believe, that group went to Washington and talked to the RFC down there. I don't think there was anything else that could have been done to get this Granada matter reorganized up to the time it came here. We gave a group reorganization consideration on several occasions. We had surveys made of the properties as a group. We have closed numerous group reorganizations, one, I
919 recall having been before this court. It was the Griswold-Walker Terminal Warehouses which involved four different bond issues. We had also the Central Plaza and Central Plaza Apartments. I believe they were before Judge Woodward. Also the Mira-Mar and New Mira-Mar bond issues which were consolidated. Any time when we had adjoining properties we immediately gave consideration to consolidation of the bond issues as a better method of handling them. We gave it a great deal of consideration in this case, but were never able to work it out for the reasons already discussed and also at the time of the negotiations on the third issue, Lincoln Park Manor, we not only did not have the junior interests but did not have the furniture under control and never were able to line it up.

Cross-Examination by Mr. Rosenstone.

I was 26 years old in 1932. I was first employed by Central Republic in October, 1931 to handle reorganizations. I had no connection with the predecessor institutions. Prior to 1931 I handled reorganizations at Greenebaum Sons Investment Company. I had been working at Greenebaums in reorganization work a couple of years and was with them beginning with the first default on

bond issues and I had charge of the statistical and analytical department of Greenebaum Sons with a department of about fifteen people. I have studied law about a
920 year and a half but I have not passed the bar. I feel I know as much about junior interests perhaps and titles to junior interests as anybody in real estate. I claim to be an expert in respect to real estate title matters as affecting real estate reorganizations. I am secretary of the committee on the Granada Hotel and for all of the other committees and all of the other reorganizations. I know Marley Halvorsen. He was Assistant Secretary. I kept a record book of all meetings of the committee in respect of Granada and keep a record book of all the other activities of the committee with respect to every reorganization. I did not bring the record book on the Granada committee with me, but it is available. Until May, 1937 there were innumerable meetings attended by either all or a part of the members of the Granada committee. I don't know how to even estimate the number. Meetings were held upon notice to the members. Two or three of them were right at the bank. I believe Mr. Kilmer attended every meeting after his appointment. I cannot say the number of meetings held after his appointment because innumerable subjects came up for discussion as to the property where we would not send out what you would call a formal committee meeting or record. We did not just sit around the bank and talk about it when we felt like it. By "we" I refer to the bondholders' committee and the Reorganization Divi-
921 sion. The Reorganization Division was a division of the bank. All of the reorganization work with reference to the Granada was not conducted by that branch of the bank. Mr. Tuttle and Mr. Sturm are employed by the bank and are in its Reorganization Department. When I say that we considered various things, I include in "we" the individual members of the bondholders' committee, myself, Mr. G. W. Bonner, Mr. C. G. Campbell, Mr. Vollers, Mr. Peterson, Mr. Sass, Mr. Leonard, Mr. Bickel, Mr. Walter Toon, Mr. George Helffrich. I could name a number of others. These people are in different departments. There would be no purpose in having them all at one meeting. It is not a fact that no one really had any responsibility in regard to this building. We didn't just shift around from one man to another. In regard to this building as to a decision of the Reorganization Division, the responsible head was Mr. W. G. Sturm

who was the officer in charge of the Reorganization Division and he is answerable only to Mr. Arthur T. Leonard, who is the head of the Trust Department. I would say Mr. Leonard is responsible to the Board of Directors and the Chairman and President of the Board of Directors of the bank. The bondholders' protective committee was responsible for the bondholders. I think every action taken by the committee and the Trustee would indicate that every thought was given to the bondholders.

To name one thing that we did in that department
922 for the benefit of the bondholders in the Granada,
we followed collection of the income of the property and prevailed on the Trustee to take possession thereof. The Trustee was the City National Bank and Trust Company but I think that you forget that three members of the bondholders' committee were not employed by the bank. That is a majority.

We had used a great deal of effort to get the City National to take possession. I could just illustrate that by showing you where they would not take possession where we were trying to make them take possession. In respect of this building we made up and gave to Mr. Leonard a complete report of the taxes and the appraisal of the property, both by an outside appraiser, survey of the property by our own man, a personal report by Mr. John Bickel, head of the management department, and a personal inspection of the property and an examination of all of the details with respect to the bond issue and the foreclosure to see that all was put before Mr. Leonard before he would consider possession. That was not merely routine stuff because possession of a lot of properties was turned down. It is true we made some inspection of the properties in every case before they were turned down or accepted. The Trustee would not

act on it until he had the information. The sug-
923 gestion that the controlling thing when we took pos-
session or refused to take possession was the question of fees for the Bank acting as Trustee is best answered by the large issues where the Bank was Trustee—the Granada was not the largest—where they would not take possession of properties, although when I was at Greenebaums we tried to get the Bank to take possession of the properties and they would not do it. They never changed their policy in respect to taking possession. Because of the Central Republic Bank and Trust Company being the successor up until the underwriter of these issues, they

felt a very great responsibility as to them. Greenebaums purchased merely the banking business of the Central Trust Company. Greenebaum Sons Investment Company is still operating the mortgage business and the underwriting business. I would not say we had a pretty hard time to get Mr. Leonard to take the Granada property, because from the facts it looked like the logical thing to do, if the thing ever was to be worked through.

To work out a reorganization of the three properties we actually talked to every junior interest and every party in interest of the three properties. By "we" I mean either myself or some member of the Reorganization Division or that Committee. We were a large department, that is admitted, and the responsibility had to be divided. Of the four or five hundred issues handled in my department I have been responsible for the supervision of all of them, and actually personally
924 handled the reorganization and completion, that is to say, the trading deal with the owners, seeing that the terms were drawn up, plan got out and everything on about, I would say, 150 issues. In this case we felt that once we got into 77B, so we get a good title, that we ought to have a reorganization within 90 days. I figured that we would have the property in the hands of the reorganized corporation in not over 90 days. I will have the property into the hands of the reorganized corporation just as soon as the plan is completed. I don't believe the trustees and directors of the new company have been approved and the final order entered. We will get the plan in as soon as our attorneys tell us that our responsibility is ended. I would say that I had more responsibility to follow through and reorganize this property than anybody. Mr. Bonner actually followed the details, looking up the facts, and so on. Bonner was there from about the beginning of 1932 until 1936. He would check with the junior interests, gather all the information together as to defaults and condition of the property, follow the tax situation, everything that involved information so that we could take some action. He worked under me in the Reorganization Division. Before he came to the Bank he was with the Harris Trust Company about nine years, and he was with Greenebaum Sons Investment Company for about two years. He came to us from Greenebaum Sons where he did reorganization work. At Harris Trust he was in the Underwriting Department, a department that would have charge of

reorganizations of companies in difficulty. He is a man now about 40. He is not a lawyer. He had charge of 925 somewhere between 75 and 90 properties. The average indebtedness of those properties would be about $130,000. The issues ranged all the way from $20,000 to $2,000,000. He is the man that kept in touch with reorganization meetings all the time and reported to me. I reported to Mr. Sturm only if we came across something that involved a decision on policy, when we took it up with Mr. Sturm and the Committee. Mr. Bonner is now with the American National Bank. I believe he has charge of the real estate there, liquidating trusts, etc. The man who did the work looking towards reorganization of this property was in my organization. He reported his efforts to me. His salary was about $4,000 a year. If there was any plan to be drawn up he would draw an outline of the facts. There were four individuals like Mr. Bonner. I came to the Bank sometime before Mr. Bonner and I handled about 40 extensions before he was ever with the Bank. About 400 issues were handled by the committees of which I am the secretary. I imagine we had committees on about 375 of the 400 issues that we handled. Some of the 400 were just completed extensions. Mr. Sturm just supervised everything. He did not have any actual issues assigned to him. There were other persons who like myself reported to Mr. Sturm. There was Mr. Wise, who had about 90 issues. I practically completed probably about 30 of the cases Mr. Wise had. There were four reorganization men. All of the reorganization men were not $4,000 men. I suppose they would average around from $3,000 to $3,400. I have found a lot of $35 a week reorganization men, and they did not know what they were doing. I think our men were familiar with reorganization work and the financial end of it and knew what to do, and I think they made good records, each of them.

926 *Redirect Examination by Mr. O'Brien.*

Of the 400 issues in our Division we have actually completed about 275, and we have another 80 that are in the process of completion right now. By that I mean distributing new securities. We have plans of reorganization either completed or mailed and are working on completion of every issue in our organization except about 75. Out of those 75 I would say that 40 or 50 of them are garages and that sort of thing which just can't finance completion

of them. I mean that they are in tax receiverships and very hopeless cases. Most of the cases that were completed were finished, commencing in 1932 on, steadily since that time. When we were seeking to persuade Mr. Leonard that the Trustee ought to take possession of this property we did not tell him that if the Trustee did not take possession the first thing we knew this case would get into the United States District Court and some judge would appoint a trustee. As a matter of fact, when 77B was enacted everyone of our cases were reviewed and every possible case was put in 77B. I remember handling one of the first three reorganizations in 77B. It was the Powhattan case before Judge Woodward, and practically every one of our larger issues were reorganized in 77B. We thought we could complete this reorganization and turn it over to a new corporation in 60 to 90 days.

Met pursuant to recess 2 o'clock P. M., October 11, 1937.

ARNOLD M. JOHNSON:

Recross Examination by Mr. Rosenstone.

I have brought with me the minute book of the Committee. I might explain that this is what we call the
927 excerpt book kept so that all the minutes are consolidated under the Granada. Then, of course, there is a separate record by dates, each meeting run by dates that would be spread out among a number of volumes. I think this is what you want. The meetings there recorded of November 6, 1935, January 8, 1936, May 7, 1937, and May 21, 1937, are all of the formal committee meetings where there was any action requiring minutes. You have there what would be everything where minutes were actually required. The minutes were prepared within 24 hours after the meeting by myself. This is the excerpt book containing full copy of each meeting held where minutes were written up and the signed copies of the minutes are by dates, that is they run straight through in dates. I would have to bring over four books probably, or three books. These are exact copies of the minutes in the record books and I can so testify and certify to them. The Bondholders' Committee of the Granada held other meetings usually attended by a number of the Committee members, sometimes not all, where there were matters to be dis-

cussed, but no formal decision made. I recall such meetings being held. It was not just general discussion around through the office. It was a meeting of the Committee. These four meetings are all of the meetings where there was ever any necessity of having minutes. I mean where there was anything decided. I did not go through those minutes very carefully to refresh my memory. I don't recall whether there was anything in there as to any decision about putting this property into 77B. I know we
928 discussed 77B at one of the meetings. The question of the involuntary petition filed under Section 77B in Danville and the subsequently filed voluntary petition in Chicago, mentioned in the minutes of the meeting of May 7th, was discussed numerous times. I didn't say it was in the minutes, I said it was discussed. I didn't think that important enough to make a record of unless there was a decision or some action taken. We made quite a few decisions in regard to the Granada Hotel. There were a lot of problems from 1930 to 1931 on, that had to be decided. All the decisions in respect to the Granada were not made in these four meetings that were recorded. A board of directors takes a lot of action that they do not have to write up. I didn't make a record whenever the committee made a decision unless it was necessary for Committee action and involved the Committee. Plans of reorganization, for instance, would simply be in contract form and wouldn't necessarily have to be in the Committee minutes. Whether it was necessary to make a record of the decision depended upon what was involved. I wrote down whatever happened at the meeting. No one told me what to write. It is not correct that one reason for not making a very full record of the meetings was that we didn't want to write them down. The officers of the old Central Republic Bank and Trust Company employed the attorneys now representing the City National Bank in this proceeding. The Committee had nothing to do with it. The Central Republic Bank and Trust Company employed the attorneys in the case of Harris against Tuttle, which went to the Supreme Court. The Committee had nothing to do with hiring those lawyers. The Com-
929 mittee took the action to have the Trustee intervene, just why counsel advised that I don't know, but that was the mechanics; it was always as far as we are concerned a matter that we felt it was the duty of the Trustee to object to, and the Committee would cooperate in any way necessary. The Committee was sympathetic to

ny action based on counsel's opinion in this case. They re not necessarily sympathetic to any action of the City ational Bank as Trustee. There have been cases where here have been differences of opinion. The appeal in the uttle case was actually in the name of the Committee. Ve considered it joint between the Committee and the rustee and that was the mechanics of handling the appeal. It is not true that if it was necessary for the Committee to act, why it acted, but if it was necessary for the Bank to act, why it acted according to the dictates of somebody in the Bank. The Bank employed the attorneys in his case that went to the Supreme Court. It was talked over with the Committee members. The Committee did not hire the attorneys. It was a case where they were told they could not get a good title, and it was taken up jointly with the Trustee and the Committee. I don't see how you can draw the conclusion that for all practical purposes the Committee and the Bank as Trustee were one and the same person, because three of the Committee members are not even with the Bank. The Committee and the Bank as Trustee are not for all practical purposes one and the same. Mr. Clark, who used to be a member of the Committee, I believe used to be associated with 930 Cody Trust Company. Mr. Riddle was also President of the Cody Trust Company. Mr. Peterson was employed by Cody Trust Company. He was not employed by the City National Bank or the Central Republic. Mr. Peterson was brought into the situation by the Cody Trust Company more or less as a reorganization expert and financial adviser on their defaulted situations. He has a real estate firm, Peterson & Halverson, handling real estate. Halvorson is my secretary assistant. It is true that the firm of Peterson & Halvorson had an interest in the Cody issues and Mr. Peterson, I believe, is on a number of committees in some manner. I think the entire Committee was simply formed as a matter of getting together between the various parties interested. Mr. Peterson was added to the Committee simply because of his knowledge of reorganization refinancing and his representing the Cody Trust Company from the standpoint of their experience on financial problems. I suppose you would call the Bondholders' Committees at the Bank self-appointed Committees. Somebody has to get together to form a Committee. If you had gone over there and said that you would like to be on the Committee you would probably not have been appointed even if you had been an expert reorgan-

izer. I am generally familiar with trusts under wills and trusts of that nature from having been associated with bank and investment institutions. I have not been employed by the trust department of any trust company outside of the Reorganization Division. I have made quite a study of the relationship that the law imposes upon a trustee towards the beneficiaries under the trust that he represents. It is the duty of the trustee to protect the estate and look after the welfare of the estate for the
931 beneficiaries. I think the record shows that the bondholders as beneficiaries were treated exactly that way. Central Republic Bank and Trust Company refused to take committee business from anybody but their own predecessor institutions. They could have had considerable. The Continental even would not take it, and the First National didn't want to take any outside business. The First National, the Continental and the Central were the three largest banks. The Harris Trust would not even touch it and the Northern Trust would not. Now, that is all the banks. I am very familiar with what has been going on in the last few years with respect to these reorganizations outside of my own institution. In October, 1931, when I went to the Bank my salary was $300 a month.

Redirect Examination by Mr. O'Brien.

Central Republic Trust was Trustee under practically all of the Greenebaum issues. That included the Knickerbocker Hotel and the Pearson Hotel and various other large properties with issues of $1,000,000 and more. Central Republic refused to go into possession of those properties. Central Republic Bank and Trust Company and City National Bank and Trust Company of Chicago have both consistently refused to act as Trustee in possession on properties, large and small of any type, with very few exceptions, and the principal exceptions, of course, were the issues underwritten by the Central Republic Bank and Trust Company or the predecessor institutions and in all of the cases, particularly the Greenebaum cases, because they were very large issues, many of them going up to five and six million dollars in a case, the officers of both of those Banks refused to take possession and operate
932 the properties. The principal reason behind taking possession of the issues where the Central Republic Bank and Trust Company and its predecessor institutions were the Trustee, was that all of the bondholders came

into the banks at that time and looked to the banks to do something, and they had to work out the reorganizations and form the committees and work them out, and they felt, of course, they could operate the properties better and at much lower costs than receivership operations, because they would cut out the large receiver's fees and large fees of the attorneys for the receivers, and issues that we had that went into receivers hands quickly proved that, because the fees were away out of line with the low cost of Trustee-in-possession.

IRVING E. BROOKE, being duly sworn, testified:

Direct Examination by Mr. O'Brien.

I have gone over very rapidly Mr. Schott's testimony in which he made reference to my report received in evidence here. As to Mr. Schott saying that the boiler plant which I had figured on was too small, that is possibly one point we could not agree on, but I figured the boiler plant for this building the same as we would for any building of that type. I consider it perfectly adequate. That is the size of boiler we would put in for a job with that heating load and would take care of the hot water for a building of that size and type, based on our experience of years. We had anticipated a submerged type water heater and so figured in our computation. In that type the same heat carries the hot water and steam, both. The water in the heating boiler is circulated through a water heater taking the heat from the boiler water to heat the domestic water supply. I would say that Mr. Schott's estimate that
933 some $600 additional for fuel bill would be required so as to heat the hot water is very much in error, because our experience of buildings of this type, I would say I know of but one or two cases in several hundred buildings where the cost of heating water is more than 20% of the total fuel bill. No part of that $600 figure should be added to my computation. That water heating cost was all included in the fuel bill and in the operation of the boiler plant. I am certain the fuel estimated in my fuel bill is sufficient for both purposes. I could not agree with Schott that instead of $200 for power for operating the refrigerating system the charge should be $1652, because in a building of this type that would have a refrigerating system

put in simply for the operation of this single building the motors would be too small and the power required to operate the system would be small. I still think that the figure of $200 for electric current under regrigerating system on the last page of my report is correct. As to Schott's estimate that the electric current in the water supply system costs $100 additional to what I show, I think my figure of $125 is ample. Although Schott showed $140 additional for power on the heating plant over and above the figure I show of $80, I think the $80 is sufficient. That is based from our experience on the kilowatt hours per ton of coal burned for stoker operation. Although Schott estimates a reasonable figure for labor and attendants as being $250, I think the figure I have included of $50 is ample. That is based on the new Code for janitor services which will go into effect very shortly in connection with the janitors' union, in which a building of this type must have a janitor, whether it has its own plant or not. The cost I have given here for the labor all the way through is based on the fact that you would have to have this janitor in addition to a part at least of the other present help, whether there is a plant in the building or not. My report was criticized that the boiler was too small. Well, I will stake my reputation on the size of that boiler to carry that job and we have done several hundred buildings.

934

Cross-Examination by Mr. Rosenstone.

My report offered in evidence here is not based entirely upon estimates, that is if I understand your definition of the word "estimates" correctly. I would not say an estimate is a guess, but this report is based on definite prices secured from material men and equipment manufacturers, as far as the equipment is concerned. We did not draw plans and specifications for the installation of this plant and submit the same to material men and contractors for bids. I got no definite bids on any item listed in my report. I got prices on the equipment from manufacturer. I wouldn't say that I didn't know these items because we are doing this work constantly, but as a check we secured prices on equipment that is covered in this report. We got no bona fide bids, but I understand that the bank has some. It is very customary for us to make bids on preliminary work and furnish them to our clients, architects or own-

ers. This is not simply a preliminary estimate about what the thing is going to cost. We do not ordinarily make estimates that way. We usually get prices on all of the equipment if it is possible from the manufacturers. That does not include delivery charges, installation charges and every conceivable thing that enters into the construc-
935 tion of a plant. That would only cover the furnishing of equipment. In some places it would cover the furnishing of equipment installed in place. My estimate is based upon using coal. In my estimate I have $900 as the cost of installing a proper stack in that building. That includes installation in the item just above where it says foundation, stack, boilers, stoker. Foundations has nothing to do with installation costs, that is building the foundations for the equipment. I have said that we had figured that a janitor would have to be employed on this building, whether a plant was installed in the building or not under the new Janitor's Code. That has been worked out by the building managers and the Janitors' Union. That Code provides for the employment of an engineer in addition to the janitor in certain classes of buildings, as I understand it. In the class of buildings as the Granada I think that it is only a janitor. In the Granada I think it means that shortly they will have two operating engineers there. In the Arlington the new Code would require only a janitor, as I understand it, but that the janitor would have to be there whether there was a plant installed or not, and in making our estimate for labor we have only covered the additional labor required. My estimate has no provision for the storage of coal, as coal would be delivered there in comparatively small quantities and would not require any great amount of coal storage. In the original design of the building they would make provision for storage, perhaps. That would be a comparatively small item. It would cost probably fifty or one hundred dollars to put up a partition. That is included in the general installation of building charges. It might come under the head of contingencies.

936 EDWARD HALL, recalled to the stand, testified:

Direct Examination by Mr. O'Brien.

When I said over a certain period of time I had been doing most of the work at the Granada I had in mind the period from December 1, 1931 to approximately the middle of January, 1934. If I said that that condition persisted up to May of this year I did not intend to so say.

When the arrangement late in 1933 or early in 1934 in respect of the payments of $600 a month was put in effect, the price paid in the past entered into the negotiations and it was generally understood that the fixing of this new rate would not involve going back over the old accounts with the idea of making any refunds for the Arlington. No credit was taken in the transaction on account of past payments.

Since I was last here on the stand you have spoken to me. That was Saturday morning. It had nothing to do with this subject. It was in reference to finding the contract that we were short of. We did not discuss anything else. I did not talk to you this morning.

Cross-Examination by Mr. Woods.

937 After looking at court Trustee's Exhibits B-1 to 5 (pictures of incinerator) I still maintain that we could have gotten along with this condition the same as we had in the past three or four years with temporary repairs although I also said the other day that we had it in mind to make the repairs if and when the state of the treasury justified it. The thing needed attention from the day I came in there.

Redirect Examination by Mr. O'Brien.

I didn't know except from hearsay that the incinerator had been rebuilt. I wasn't there while the rebuilding was going on.

Thereupon the City National Bank and Trust Company of Chicago, as Trustee, rested its case.

WAIT REYNOLDS LOVELESS, called as a witness on behalf of court Trustee, testified:

Direct Examination by Mr. Rosenstone.

I live at Riverside, Illinois, and am a mechanical engineer and am connected with the Western Electric Company and have been for fifteen years. During that time my particular duties in the engineering field have been designing and construction of power plant equipment, boilers, refrigerating equipment, heating and ventilating equipment. I am not an officer of Western Electric. I am in their engineering department.

938 With reference to installation of power plants and refrigerating plants, my work mainly is the original estimating and designing and installation of new equipment. We have no equipment in apartment buildings or hotels. The work is entirely industrial buildings, manufacturing buildings, with a small part in connection with individual residences. We maintain refrigerating equipment for manufacturing processes, for various drinking water systems and air conditioning systems within industrial plants. I have installed refrigerating systems where they have a central unit for manufacturing or industrial purposes, but not for residential purposes, using brine for circulating systems.

I have seen copies of the reports by Samuel Lewis, Hertzman, Schott, Brooke, and Dauber. I have made an analysis of those reports with reference to the cost of operating the heating plant, the refrigerating plant, and supplying hot and cold water from the installation in the Granada apartment building. I was at the Granada Apartment building about the middle of June of this year at Mr. Woods' request. I was escorted around the basement area which houses the service equipment and examined the equipment with the idea of seeing what units and type of equipment were being discussed. My recol-

939 lection is that in the boiler room there were two units —one large and one somewhat small, two water tanks with three pumps. There was a vacuum pump in connection with the heating system, another circulating pump in connection with the domestic hot water system, and the refrigerating unit with its appurtenances—condenser and brine tanks. I have made a written report to Mr. Woods

with reference to these reports. Court Trustee's Exhibit AA which bears my signature is that report.

The feature of the Hertzman report of December 23, 1933 which I criticize is the omission of any consideration in his report of the value of the building space which houses the service equipment. No allowances had been made in the report for interest and depreciation upon the value so represented. I estimated that the depreciation should be $3,861 based on 3% for building and 4½% for equipment. The value of equipment given in all reports is practically the same and I presume that has a definite basis of record. The original cost given in Mr. Lewis' report, Mr. Hertzman's report—all of them used the same figure. I used the figure of 4½% depreciation rate upon service equipment of that character. I estimated the value of the building space occupied by the service equipment to be $61,920 and used a depreciation rate of 3% for buildings of that character. I am speaking of the space in the building which is occupied by the service equip-
940 ment located in the building. A large portion of the boiler room is of considerable depth and that is rather expensive construction. It requires retaining walls to resist the earth pressure adjacent.

Objections to the testimony in respect of the building costs and cost of construction by Mr. O'Brien on the ground that it is wholly irrelevant and on the ground that the witness is not qualified were overruled.

Witness continuing:

I graduated from technical college in 1902; out of electrical engineering work until 1916; from 1916 to 1923 was engaged in both electrical and mechanical engineering, and appraisal work, valuation work in this country and foreign countries; from 1923 to the present time I have been in the building construction organization of Western Electric Company. My duties there involved the preparation of estimates, of costs of buildings and their various service equipment. I figured a cubic foot for the erection of a space such as this equipment is now housed in at 72¢ per cubic foot volume. I estimated that a building of that character complete would cost approximately 70¢ per cubic foot. I increased that 70¢ by my estimate of the excess cost of construction of the lower portion or basement area, the excavation, the heavier walls, the heavier floor construction required by reason of the floor

being over a space below rather than resting upon
941 soil, and then I reduced that amount by omissions of allowances for complete finishing which was not required in the basement. By finishing I mean floor surfaces, painting, and higher type of building construction in that part of the building which is to be rented or used for better occupancy than for service equipment. The result was 72¢ a cubic foot. If a space had been provided to house only the service equipment necessary for the use of the Granada Hotel, the volume would have been consideraly less. I have made no estimate as to the actual amount. The type of construction required for the boiler room would have been much less expensive because a boiler of a size suitable for the Granada Hotel only would have required a much shallower basement. The existing boiler room goes much deeper into the earth than would have been required had the boiler been smaller to meet the requirements of the Granada Hotel only. That applies to the service equipment—what we term the service generating equipment,—the boilers and the pumps and the refrigerating machinery would have been much smaller and less expensive.

The court hereupon ruled that Mr. O'Brien's objection that it was not shown that the witness was qualified and his objection to the relevancy of the testimony of the cost of the foundation construction may be understood to
942 be interposed to each and every question and to be overruled and the ruling excepted to.

For three years I was in appraisal and valuation business as consulting engineer myself and employed by expert accountants dealing with cases to be presented before the income tax bureau. Also during that past three years I have completed a study of depreciation rates on buildings, service equipment, amounting to gross valuation of about $19,000,000. This study has been presented to the representatives of the income tax bureau.

With reference to the item of 20% in the Hertzman report within which is consolidated fixed charges, overhead and profit, my practice has been to exclude interest charges from that combination when fixed charges contain depreciation at fixed rates, for the reason that the depreciation is a constant figure yearly and the overhead and profit may vary. There are standard percentages to use in determining depreciation. Of course, they vary according to the character of the equipment, the character of the building, and the use to which it is put.

There is no way of telling from the Hertzman report what, if anything, he allows for profit on those operations to the Granada. In view of the limited market for the service and the possibility of considerable loss to the Granada in the event that it should lose a customer, I would consider that an adequate profit should not be
943 less than 20%. The fixed charges alone which would be applicable to either of the customers in this case are greater than or approximately equal to a 20% profit. The failure of a customer or the loss of a customer would throw that amount of fixed charges into the Granada profit and loss account. The Granada receives no benefit from having the plant located and operated in their building other than any monetary benefit that it might obtain in the nature of profit. I would like to qualify that. There would be a slight advantage to the Granada in combining the services for the three buildings because the labor of operation, the men, the attendants would probably be less expensive for a central plant than for three separate plants, consequently the proportion of that labor allocated or applicable to the Granada would be somewhat less by having a central plant than if the plant were only for the Granada's service. By having the plant in its building Granada has the disadvantage magnified by the increased size of the plant which is also present when any moving machinery or other equipment which might be of a nuisance character is present in any degree. I refer to the noise of the machinery affecting the desirability of the adjacent rental spaces, the apartments or rooms immediately above. There is also the disad-
944 vantage in the summertime of the heat emanating from the boiler room where they have a boiler for hot water heating. That room in June when I visited it was very warm—much warmer than other parts of the building.

There are apartments directly above the service rooms. Of my own knowledge, I do not know if the sound from the operation of those plants and the vibration can be noticed and heard in the rooms immediately above.

As to the Dauber report, my opinion is that his total of fixed charges is slightly low. I believe his interest rate of 6 per cent is high. It is higher than I have been accustomed to use. In my practice we used 5 per cent. His depreciation of 3 per cent is quite low for equipment of the character of the service equipment in the Granada. The

study that I made recently which I mentioned during the qualifications covering about $6,000,000 worth of that kind of machinery showed an average of 4.51 as the depreciation rate over a period of thirty years. I studied the history of replacement of machinery taking its life and determining the depreciation rate which should have been charged to meet that average life.

In the Dauber report I can find no consideration given to that part of the building which houses the service equipment which I consider very important in establishing any rate for service. I could find no item giving any consideration to the reduction in the rental value of the space
945 adjacent to the service equipment room.

To that Mr. O'Brien added the additional objection that there is not any evidence whatever that the space has any rental value.

TRUSTEE'S EXHIBIT AA for identification was received in evidence over Mr. O'Brien's objection.

Cross-Examination by Mr. O'Brien.

I am senior mechanical engineer at Western Electric. That company does not sell any service, hot water, steam or refrigeration, to apartment buildings. It does sell services to offices and warehouses owned by a subsidary company but not to any third parties other than subsidiaries or my own department. I didn't inspect the properties other than Granada at all. I only saw the service in a small part of the Granada. I found in the basement of the Granada about twelve service units. It is my recollection that there were two boilers. At the time I was making no detailed inspection. It was a cursory trip through the building to see what it looked like. I have never been there since. Whether the Granada had a plant to service only its own building or whether it had the present plant, it still had to have foundation walls to hold the building. The present plant does not fill up the basement of the Granada. There are other bas ment rooms. There is plenty of room down there even with this plant in.

946 The Schott report did not take into consideration the cost of construction of the foundation and basement space and I criticized that in my report. I differ from Mr. Hertzman, Mr. Dauber, Mr. Schott, Mr. Brooke, and Mr. Samuel—the other engineer. I differ with them

all. I think they have all omitted something. I believe they are all wrong on that point. I consider the useful life of that particular equipment is about twenty-two years. Assuming the useful life is twenty-two years, I would fix the depreciation at 4½ per cent. That is straight-line depreciation—dividing the 4½ per cent into 100 and getting the number of years. That is the accepted method.

Taking the Schott method and having in mind that you are going to set aside a fund that will be capable of purchasing a new plant at the end of the twenty-two year period, I cannot tell from memory what the rate would be but I presume it would be less than 4½ per cent. It would be closer to Dauber's figure of 3 per cent if it is figured on compound interest.

Now supposing that the people who are actually dealing with the plant had a different concept of the term of its useful existence and figured a depreciation and amortization at about 10% a year, it should be written off totally by 1933 and for the purpose of depreciation on Government income taxes they would not let you take any
947 further depreciation. A depreciation charge whether at 3% or at 4½% in 1934 if the same plant were still being used would have no proper place in the fixed charges. If the plant had been written off completely there should be no further. I don't see that the same thing is true of the interest charge whether at five or at six per cent. If you have your fund set up to replace the plant that fund should bear interest as a matter of bookkeeping. If you charged in your interest as part of the fixed charge, you have to offset it with the interest on the fund which you have accumulated if it can be done. If you can get the interest on the fund. You don't continue to charge interest on it when you have gotten back your principal investment, if you pay off your bonds.

If they got back their original investment in the plant over a period of ten years they would still be charging interest. That is continuous. It is a continuous investment. It is not to be offset with interest on the fund which the purchaser has provided to buy a new plant because that fund has to be spent for replacing its machinery and the investment continues indefinitely. If you are still using the old plant for the full twenty-two years I spoke of but you have charged it off in ten years so that at the
948 end of ten years you have a fund sufficient to buy a new plant at the same price but do not buy a new plant,

whether you continue to charge interest I don't know. You sprung a new one on me.

My experience in appraising has been with knitting mills, dyeing establishments, carpet manufacturing and private residences. I never had but one case of figuring the cost of a hotel. I do not care to tell the court as of my own knowledge what the average construction cost per cubic foot was in 1924 of apartment hotel buildings of this type because I had nothing to do with apartment hotels built in 1924. When I say it is more correct practice to exclude the fixed charges rather than to lump them as Hertzman did, the same goes for the Schott report. I criticize it also in that it includes the interest, depreciation, repairs, maintenance, and profits. Depreciation is an item which is the same year after year. Overhead may vary from year to year and the profits may vary from year to year.

I criticize Mr. Schott for taking 5.7% per annum on $44,400 odd for repairs and maintenance as a part of the fixed charge. For that class of equipment I would use a lower figure. I did not have in mind that the Granada property had this central plant installed in the basement without any binding agreement with the other two properties to use the service. I didn't know what the facts
949 were on that. I didn't know what actual agreements there may have been between the owners of these different properties themselves. With this exception—I read over a copy of one agreement and did not keep it in mind very much. I don't recall the terms of the agreement. In arriving at my conclusions I took the data in Mr. Lewis' report as regards the cost of service equipment, and either Mr. Lewis' or Mr. Dauber's, or both of them together, regarding the number and quantity of service units. If the Granada were to discontinue servicing the Arlington and the Manor properties, it still would have to provide some labor payroll to operate its own plant but probably not to such a great extent because operating labor of that character need not necessarily apply all of its time to running the service equipment but can be used for other purposes. Some of it apparently is being used for other purposes now judging from the figures I saw in the other reports. All of the reports say that the labor charge of Granada should be prorated or divided over the three properties. I don't know what the contract is. Besides the basement I went through the corridor and into the offices of Granada while I waited for the manager. I do not know

myself whether there are apartments over the boilerroom or not. I asked the question and was told there were.
950 I didn't go into any of the rooms over the boiler room to see if I could detect any noise nor did I go up there to find out if heat emanated from the boiler room. I was not particularly interested at that time in the question or I might have done so. Whether Dauber's method of figuring the depreciation based on the twenty-two year life of the plant was incorrect is a matter of opinion. His method is one way of doing it. I don't know whether it is one accepted way of doing it. I presume it is accepted by the income tax bureau but it is not insisted upon by them.

Redirect Examination by Mr. Rosenstone.

In making an analysis of these various reports I did not favor one against another. They were handed to me with a request to examine them and comment on them. My report shows that. I used the same computation, the same figures, with reference to all of them with this qualification that in certain reports, namely Mr. Dauber's, Mr. Scott's, and Mr. Sam Lewis', most of their figures were accepted as they gave them. Mr. Dauber's report stated that it was based upon average cost and average actual cost. I could not go beyond that. If that was the average annual cost, why, who am I to say it was incorrect? I examined the report to see as to its completeness, whether points had been covered which I felt should be covered
951 and whether proper consideration had been given to the points that were covered.

WILLIAM H. SCHOTT recalled as a witness testified:

Direct Examination by Mr. Rosenstone.

Since I was last here I have seen the Dauber report and have analyzed it in connection with my own. I have made a recapitulation or analysis showing the differences between my report and his. In comparing the two reports, there is such a wide difference that I went through each item to determine where the difference came in. He has estimated the amount of power, for instance, that it would take to operate the plant and then assumed a load factor and on the power end of it he runs over while on the water

he has assumed their theoretical figures as to that phase of it. In other words, he figures 2,250 gallons a day to be the amount of water required as a maximum to handle the condensers from the refrigeration end of it. He only estimates 2,250 gallons of water an hour 15½ hours a day, where it takes as high as 72,000 to 75,000 gallons a day instead of 30,000 or 32,000. In other words, the temperature of the water governs the volume of water you have to put over that condenser to operate it. I have made a tabulation of these differences which I made yesterday. Thereupon the tabulation was received in evidence as COURT TRUSTEE'S EXHIBIT BB.

952 *Cross-Examination by Mr. O'Brien.*

I don't know of any corrections I care to make on account of any particular errors other than the ones I have already made. Leaving out of consideration all fixed charges and profits my report shows that the total cost to Granada is between $21,000 and $22,000. I made up a schedule of all of the charges and I had a total of that, and then in working them out they were all absorbed.

Included in my operating charges is an item of $1300 for repairs and maintenance whereas for the year 1936 it was $1000 and something. I covered the years 1935 and 1936. I took the average of those two, and then I made allowance on that end of it in excess of that for what it would ordinarily be, because there had been repairs that had been made—were left over to be done since. I don't know that the average repairs and maintenance were $600. I didn't go back but two years to get my average.

When I got the operating charge I charged 5.7% per year to provide for that for the future. That item is not counted in on the $44,400 of the original cost of the equipment. It is in there in the fifteen per cent, just a
953 part of the fifteen per cent to allow for all those items on the cost of the property. What the 5.7% runs to I haven't in mind. I have the fifteen per cent in mind because I consolidated those figures and set forth what made this up. Whatever the figure is, 5.7 times the original installation cost, per year, represents one point of difference between my report and Mr. Dauber's. I charged interest on that installation cost at 5 per cent per annum and Mr. Dauber at six per cent per annum. He has nine as against my fifteen, as his combination. I took the same

line depreciation that Mr. Loveless mentioned in arriving at 4.3 per cent.

I have a charge of two and a half per cent for insurance and taxes which is included in the $44,400. Dauber has the same charge. Dauber hasn't put in the percentage profits over and above all of that. He has outlined it but he didn't put in his figures. He made a memorandum at the bottom, but didn't put in the figures. He is figuring his on a theoretical cost. That is the largest single item of difference in our respective reports. In the analysis there he is entitled to credit on some items and he is short on others.

I got the figure in the amortization or depreciation on the assumption that the lifetime of the plant is still running. I never found out from any source just how
954 much money had been paid for that purpose by the other two hotels to the Granada and I don't know now.

CLAUDE S. PARKER, recalled as a witness by the Court Trustee:

Direct Examination by Mr. Rosenstone.

There are ten units of rentable space on the first floor of the Granada. Those units are one room, two rooms and three rooms. About seven of them come over the engine room. The others over the boiler room. They are all rented at the present time. Three of them are used for the employees of the hotel. I have been living in one of them for approximately three years. It is right over the compressor in the boiler room. Quite a bit of vibration is noticeable from operation of the machines when the machinery is running. You can hear the noise from the operation of the machinery.

How many hours a day it is running depends on the time of year. During the winter months approximately ten hours a day and during the summer months any where from twenty to twenty-four.

I have been manager of the hotel since May 1, 1932. The total rentable value of those ten units on the first floor is about $600 a month. We have had difficulty in renting those premises in the past.

955 As a rule I have difficulty in keeping tenants in those apartments. Objections are made by tenants as to the vibration from the compressor.

Cross-Examination by Mr. O'Brien.

Tenants don't favor first floor rooms anyway as a rule. They are not as desirable as the upper floors.

Redirect Examination by Mr. Rosenstone.

If the tenants could not hear any noise or feel vibration from the operation of that machinery it would increase the valuation of those particular apartments from ten to fifteen per cent over the Six Hundred Dollars a month they are worth now.

Recross Examination by Mr. O'Brien.

The present rentable value of those units on the first floor is about Six Hundred Dollars a month. That is figuring in the ten units. The staff occupies three of those units of which I figure the value as about One Hundred Sixty Dollars per month.

Met pursuant to adjournment October 12, 1937.

Present:

Mr. Woods.
Mr. Rosenstone.
Mr. O'Brien.
Mr. Tuohy.

WEIGHTSTILL WOODS, Court Trustee, recalled as a witness in his own behalf:

956 *Direct Examination by Mr. Rosenstone.*

I had a talk with Mr. O'Brien, Mr. Leonard and Mr. Bickel on or about August 27, 1937. I called Mr. O'Brien at his office on the 26th and again on the 27th. I saw Mr. Leonard and Mr. Bickel at the City National Bank on the 27th of August. In my telephone conversation with Mr. O'Brien I told him that I had received the audit and that I wanted those sums which were shown on the foot of the last three columns and I also wanted the $400, house fund, which had been taken away and was not referred to anywhere in this audit. In my conversation with Mr. Leonard and Mr. Bickel I told them the same

thing. And at that time I had made a little pencil notation at the foot of the audit, which is Court Trustee's Exhibit B here; that pencil notation is still there. It was there when I showed it to Mr. Bickel and Mr. Leonard there at their office. I discussed some other matters with Mr. O'Brien on the 27th but don't recall now what it was.

After I became trustee I learned that the incinerators needed attention and made an examination of them. I spent some time trying to learn whether an economy could be effected by running the hot water through there before it went into the hot water tank. I had some engineers look at it. Their conclusion was that the incinerator was too small to really effect any purpose of using the heat
957 there for warming the cold water before it went into the hot water tank. I then asked the engineer if we could not do the work there in the hotel. He examined it and I talked to him about it. He said that the work inside the incinerator and in the stack was in such small quarters and required such technical skill that he would not dare undertake it himself and that he didn't think we should use anyone from some other type of service. I then asked a brick layer whom I know pretty well—Marion Lawson, who has been a brick layer in Chicago for many years, to examine the situation and give me an estimate what he would do the work for. He was up there, I think two days, and examined the incinerator and the stack; and he came back and reported that he would not undertake the task at all. He said that no one except an experienced stack builder, an arch builder could do the work, and that it was dangerous because of the small quarters, and he would not undertake the work at all—he would not even give me an estimate. He gave me the names of two or three contractors and I got the names of several other contractors, and took some bids. When the bids came in they varied greatly as to the cost, and no two of them were alike as to the extent and nature of the work to be done. I asked Mr. E. R. King, who is a practical boiler room man, who spent a number of years shooting trouble in boiler rooms for a great many buildings, to look at the situation and see what the specifi-
958 cations should be. He took a brick workman who is familiar with stack building and incinerator work, up there and formulated his specifications; and I took new bids on them. I accepted the bid of Russell & Company and had the work done. The room inside the incinerator

is very small. The arches over the doorways of the incinerator and the front well had fallen so that they had to be rebuilt. Only one person could get in there to work, at a time. The material had to go in through the small doors; and the material for the stack had to go down from the upper floors, go through the receptacle doors on each floor, and you had to let down just a small quantity at a time, because only one person could get in the incinerator, and only one person could get in the stack. The whole bottom part of the inside of the stack was crumbling; there were places there you could stick your arm entirely through, back for two or three feet. At the corner of the inner stack it was clear open and you could see clear through to the outer wall. The inner wall of the stack was not fastened to the outer wall; there was an air space in between; and it was necessary to start at the bottom and build up. And you had to support the upper portion as you took down the lower portion. You had to take off one side for a couple of feet and support it and build that up, and then take off the other side for a couple of feet and support it. And the space inside this inner stack was so small that only a small man could get in there. The danger of the thing was very great be-
959 cause if he loosened it too much the whole stack all the way up might fall down on him, and there was no way to do the work other than to start at the bottom and build up. These pictures here, Exhibit Z, show the conditions at the bottom of the stack and at each of the floor levels.

It is now in as good condition as it ever was. The arches have been rebuilt and the inner stack is restored with fine quality of fire brick.

I spoke to Mr. Mitchell, who has been a resident of the hotel for about twelve years with respect to his attitude in using some of the lobby space for public use. He is a responsible business man here in Chicago and has lived the life of the hotel practically from the time of its construction. None of the tenants with whom I talked about putting commercial enterprises in there objected to it. I talked to two tenants. They thought it was desirable.

I discussed the advisability of renting the ball room for a lunch room or tea room with two hotel men who were familiar with that community. I discussed it with two practical tea room people who know the community and I have discussed it with real estate men. From my investigation my opinion is tnat that space is admirably

suited for a tea room or similar purposes. I went over the space very carefully on Sunday and I find that there is equipment which has been there since 1928, I be-
960 lieve. There are one hundred folding chairs; there are steel chairs with gold trimmings; there are eighty ball room chairs, those are gold covered; there is a pipe organ and a grand piano; there are thirteen dining tables, which are about 4 by 7 feet, of the fold-away type. There were more than forty card tables of the fold-away type. In the kitchen there was a gas stove with four burners and two ovens and a large sink. There were two large work tables built against the wall for kitchen uses and above and below those work tables there were about twenty feet long spaces for storing foods and pots and pans. There is an outlet in the kitchen to the shafts which ventilate that part of the building, which are connected onto the power motor. In the writing room are the cabinets which are for the library, and several tables, and twelve or fifteen comfortable chairs. And in the solarium there are tables and a number of settees and chairs of wicker type. All of these rooms are well lighted with chandeliers and wall lights.

The equipment in the Directors' room is just office equipment. That also is well lighted. There is a sky light in the directors' room and another sky light in the kitchen area.

961 The copy of "The Topics" which you hand me for June and July, 1937, is the monthly pamphlet, or house organ which has been published jointly by the Granada and the Arlington and, at times, by the Lincoln Park Manor for about twelve years.

That is similar to the previous issues which have been put out. I have looked at all of the volumes of those issues that have been put out and this document is similar in general form to the whole twelve years. Page 2 is a standard page which appears in all of them, and most of the pages in there are similar in make-up to the pages that have appeared in the issues for the whole twelve years.

On Page 7 is a picture of the ballroom, which shows the side next to the lobby, and shows the stage, two doors on the left leading to the lobby, and the door at the extreme right is the door into the kitchen. That is a good representation of its condition as it is today. On page 13 is a list of the churches in that neighborhood. That list has appeared in these issues for twelve years.

(The pamphlet is marked Court Trustee's Exhibit 1 for identification of October 12, 1937.)

I have had correspondence with City National Bank and its officials in regard to the petition which I filed and
962 which is being heard with the other matters in this hearing, with respect to a determination of the charges to be made against the Arlington for services rendered.

The documents attached to the petition are documents which I had to do with.

After the notice was given, which is Court Trustee's Exhibit "A" on June 15, I served an additional notice upon the City National Bank and Trust Company, individually and as Trustee, the Bondholders' Committee for the Arlington, the Bondholders' Committee for the Granada and upon Defrees, Buckingham, Jones & Hoffman, their attorneys.

I delivered that notice personally to Mr. Vincent O'Brien and took his receipt. That is Exhibit 1 attached to the petition. The next Exhibit is a letter addressed to City National Bank and Trust Company, or Mr. Arthur T. Leonard, Trustee, dated July 28, 1937, and was written the afternoon following the discussion I had with Mr. O'Brien and Mr. Leonard and held in Mr. Leonard's office that day. Exhibit 2-B is the letter from Mr. W. G. Sturm, Vice-President of the City National Bank and Trust Company on typewritten stationery, "Arlington, Inc." That was the first time I ever heard of Arlington, Inc.

On account of that letter I immediately called Mr. Sturm and told him that I was unwilling to have a relation-
963 ship to a new corporation as a tenant taking services from the Granada, unless payment were made forthwith; and I told him he would have to send me a thousand dollars if he wanted the service continued in behalf of such a new tenant.

I wrote the letter, Exhibit 2-C, to Mr. Leonard because I had written him on July 28 and the only reply I had received was this letter from Mr. Sturm. That was the 14th of August. On the 16th of August I had a telephone conversation with Mr. O'Brien and Mr. Leonard. Mr. Leonard told me that he would send over the $1000 and later that day the check came over, together with a letter, which is Exhibit 2-D to the petition. Since then I have requested further payment and no money has been paid.

No one has suggested at any time that the service should be lessened or changed so far as I am concerned.

The Court Trustee's Exhibit 2 of October 12, 1937 for

identification is a letter I received from Mr. Sturm on the 30th of September and I immediately called him and told him that I would not accept $600 a month and that he would have to pay the $1000 or I would ask the court to permit me to discontinue the service.

In the last few days I have had some pictures taken of the streets adjacent to the Granada Hotel and pictures
964 of Clark Street, north and south from Arlington Street.

The pictures that you hand me are twelve scenes taken within half a block of the Granada showing the present conditions at the Granada along Clark Street half block from Granada and are correct representations of those streets.

Thereupon, there was introduced in evidence COURT TRUSTEE'S EXHIBIT 1 for identification being "The Topics," and COURT TRUSTEE'S EXHIBIT 2 for identification, being the letter from Arlington, Inc., by W. G. Sturm, dated September 29, 1937. COURT TRUSTEE'S GROUP EXHIBIT 3 being the twelve pictures of the streets near Granada.

Cross-Examination by Mr. O'Brien.

As shown by these photographs there were holes clear through the inner wall to the outer wall of the incinerator and the outer wall was cracked. It was necessary to support it from below as you worked up, you took out a small portion. It was shored up to prevent its falling from above. The shoring was from the bottom as you work up from the ground. There was no shoring above to present the upper portion from falling. They took out just small sections about a foot or a foot and a half wide.

The wall didn't fall. They didn't let it fall. They
965 had to take out fragments of brick that were left there and put in new ones. The wall didn't fall down.

There are two large entrances from the ballroom into the lobby. There is a hallway from the kitchen that runs straight back along that west wall of the hotel, and you can go right through the store-room right into the receiving room which leads to the alley; you have immediate access with food through that space—through that hallway, you don't have to enter the main hotel at all. I think the present lighting there is admirable for a tea room. You have wall lights, you have an electric machine there, a rheostat on the stag and you can turn the lights as high or as low as you like. I wouldn't make a bit of change in the lighting.

I don't think I would make any changes at all unless you got a tenant who had a full equipment and wanted to put in their own tables and chairs. In that event I would store the present equipment. I wouldn't change the room itself a bit. It is all clean and in fresh condition and it doesn't need any change. This photograph shows the situation very clearly.

I didn't check to see how the taxing authorities figure this excess public space. I don't know that this excess public space is classed as "balloon space" for the purpose of figuring the tax per cubic foot. I didn't find out from any source what the tax per cubic foot would be if that were usable space.

I didn't know that the so-called "house fund" of $400.00 is shown in the statement which you gave me covering
966 the period May 1 to May 17, 1937 in the item of $773.40 on the first page under "Assets, Cash on Deposit in Trustee-in-possession Account." This particular audit (Exhibit "B") has a notation at the foot of it which states that that is a fact.

You gave that to me together with all the other accounts for a couple of years, and they were sent over to my office on the 25th or 26th of August. Mr. Hall brought to me the statement for April which I have. Mr. Hall never brought me any statement for May. I never had any statement for May until I received this document along with the similar monthly audits for about two years on the 26th of August. I told you at that time that I was turning all of these documents over to the Arlington to check and that I was merely talking to you about Court Trustee's Exhibit B. I don't know whether that $400 is included in the balance shown on this audit for May or not. He put that notation at the end of it but he don't say whether it was there after he closed the balance that he has there or not; he merely states that he put it into that account.

Thereupon, Mr. O'Brien asked Mr. Smith, who prepared the instrument in reference to the $400 house fund and he stated that the $773.40 had included the $400 house fund.

(Mr. Woods presuming.) I didn't know then and I do not know at this moment whether that $400 is included in the total which he has there in his audit for May. But
967 we have in evidence here duplicates of the City National's sheets and it is purely a matter of looking at those sheets to determine whether the $400 is included or not.

Barrow Wade & Guthrie didn't make any reference to

that $400 in this consolidated account; it is not mentioned there anywhere, and there is no way I can tell from that whether it is in or out.

My last demand for $1000 was made pending the disposition of my petition here which asks the instruction of the court in the premises, but time is passing by and it is my duty to collect for what I sell. I asked the court to determine how much Arlington, Inc. owes and I said the amount was around $20,000 and I thought I was very lenient when I asked for one thousand on account. I didn't ask for One Thousand Dollars on account in the petition which was set for hearing at the time I made this demand. More money should have been paid pending the court's disposition of the matter because I am furnishing service every day. More money should be paid than was being paid at the time I was appointed because Arlington, Inc. had nothing to do with the property when I was appointed. There was no agreement; the Court has so ruled in the order you prepared and that was entered here July 14, no contract or agreement of services being furnished under the implied agreement in law that the receiver will pay the reasonable value of the service.

968 Thereupon, the Court Trustee rested his case in rebuttal.

969 T. P. SMITH, called as a witness on behalf of City National Bank, being sworn, testified:

Direct Examination by Mr. O'Brien.

I am associated with Barrow, Wade & Guthrie, Auditors. I am a staff member. My Company made monthly audits of the Granada Hotel for City National Bank & Trust Company. Document marked City National's Exhibit 1 for identification of October 12, 1937, was prepared by my Company and includes an account of all funds relating to the Granada as of May 17, 1937 in possession of City National Bank as recorded by the books of the Granada.

The "House fund" of $400 is included in the general fund of $773.40. That fund, I believe, is taken from the Hotel and put into the general account along with other Trustee-in-possession funds. I was at the Granada yesterday and examined the books and took off the figures showing the refrigerating and water charges made for the years 1930 to 1936, inclusive, against the Lincoln Park Manor and the Arlington.

Documents marked City National's Exhibits 2, 3 and 4 for identification of October 12, 1937 correctly reflect the charges and revenue for that service during those years according to the books of the Company. There were thereupon offered and received in evidence documents
970 marked CITY NATIONAL'S EXHIBITS 1 TO 4 of October 12, 1937 for identification.

Cross-Examination by Mr. Rosenstone.

City National's Exhibit 1 was prepared by my firm some time in the month of May, I believe. It may have been held over a little in June because Mr. Hubbart asked me to hold it over for a little time. I don't know when it was delivered to the City National.

EDWARD HALL, recalled as a witness on behalf of City National Bank:

Direct Examination by Mr. O'Brien.

I have seen City National's Exhibit 3 purporting to be a copy of Mr. Lewis' report dated August 14, 1929 before and have also seen City National's Exhibit dated January 31, 1934—Supplemental Report. Exhibit 3, the original report, was obtained from Mr. Lewis by Mr. Hiram S. Cody, of the Cody Trust Company, and was sent to the Cody Trust Company.

The information referred to by Mr. Lewis was given to him by Mr. Cody or by the staff at the Hotel. At that time the Granada was making a charge sufficient to include
971 its operating costs, interest, amortization, repairs and maintenance at 15% and a profit of 20%. It continued to make that charge down until January of 1934. It was around then that I saw Mr. Lewis and it was pursuant to that that City National's Exhibit 4 was prepared. I have made a search to locate figures for years prior to 1930 and also for 1930 and 1931.

I found three yearly reports. I am familiar with document marked City National's Exhibit 5 for identification of October 12, 1937, purporting to be a report of December 31, 1929 prepared by Hotel Audit Bureau. I got it from the foreclosure files in your office. That report was made by those auditors for the Granada property. The page marked "Schedule A-3" in the report shows the charges

and revenue for heating, refrigeration and water. "Schedule B-4" is a similar report for the year 1930 made by the same people.

Mr. E. H. Schuck is a Certified Public Accountant, at one time employed by Cody Trust Company and at the time of the making of the report marked City National's Exhibit 6 for identification of October 12, 1937, was an employee of Ritchie Bond & Mortgage Company but doing a little outside auditing. He made that report.

Schedule 1, the 3rd item, headed "Heat, Light, Power and Refrigeration" in report marked City National's
972 Exhibit 7 of October 12, 1937 for identification, shows the data on charges and revenues from heat, light and power for the year 1931.

There were thereupon received in evidence instruments marked EXHIBITS 1 TO 4 for identification, respectively, the first being the audit for the period May 1 to May 17, 1937, the second and third being transcripts of Granada books relating to the charges and credits for heat, refrigeration and water for the years 1930 to 1937 with respect to both the Arlington and Lincoln Park Manor, and Exhibit 4 being the recapitulation sheet relating to Exhibits 2 and 3.

T. P. SMITH was called to the stand:

Redirect Examination by Mr. O'Brien.

I took off a transcript of the operating charges of the Granada and revenue to the Granada for heat, refrigeration and water service to the Arlington Hotel and the Lincoln Park Manor, but not for such service to the Arlington alone.

City National's Exhibit 8 of October 12, 1937 for identification correctly reflects the books for the last five months of 1932 and for all of the years 1933, 1934, 1935 and 1936.

973 Thereupon document marked CITY NATIONAL'S EXHIBIT 8 of October 12, 1937 for identification was received in evidence.

EDWARD HALL, being recalled to the stand was cross-examined by Mr. Rosenstone:

I am certain that the figures in Exhibits 5, 6 and 7 are correct and know so of my own knowledge. I know that the report is true and correct and have checked the figures. I have been there.

I did not make up those reports and was not there when they were made. I was there when that Exhibit by Schuck was taken. As to the other Exhibits I wasn't there but I know the auditors and both of them are certified accountants. I know that they are correct by knowing the auditors and from having been over these books a great deal. I did not check the books to find out if the reports were correct.

Thereupon both sides rested.

Thereupon Mr. O'Brien moved to strike the testimony of the witness called by Mr. Woods from the City National Bank, and examined under cross-examination under the rule, first on the ground that under that rule Mr. Woods was not entitled to cross-examination and secondly on
974 the ground that that testimony in no way tends to support the objections advanced by the Trustee. Motion was denied, to which ruling the City National Bank, by its counsel, duly excepted.

Mr. O'Brien thereupon moved that all of the testimony be stricken which relates to the improvement and alteration of the so-called excess lobby space on the ground that as a matter of law the Trustee in Possession had no right to improve or remodel that public space or any other part of the building. The motion was denied, to which ruling City National Bank, by its counsel, duly excepted.

Thereupon Mr. O'Brien moved to strike all the testimony relating to the receiver's Certificate of Indebtedness on the ground that it amounts to a collateral attack on the order of the Superior Court, which had jurisdiction of the subject matter and of the parties and on the further ground that the point is res adjudicata. Motion was denied, to which ruling City National Bank, by its counsel, excepted.

Thereupon Mr. O'Brien moved to strike all testimony relating to acts and accounts of a predecessor Trustee on the ground that the liability by the City National Bank and Trust Company of Chicago, as Successor Trustee, runs from January 3, 1935 and afterwards and not for any earlier period. Motion was denied, to which City Na-
975 tional Bank, by its counsel, duly excepted.

Mr. O'Brien thereupon made the same motion on the ground that the account of William L. O'Connell, as Receiver of Central Republic Trust Company, predecessor Trustee, stands approved by order of the Superior Court of Cook County offered in evidence. The motion was denied, to which ruling the City National Bank, by its counsel, excepted.

Mr. O'Brien moved to strike all testimony relating to the acts and account of City National Bank for any period prior to September 30, 1936 on the ground that the account has been stated for a prior period and is res adjudicata. Motion was denied, to which ruling, City National, by its counsel, excepted.

Thereupon the Court directed Mr. Woods to file a brief in 15 days, accompanying it with findings of fact and conclusions of law to which he believed he was entitled. Mr. O'Brien was directed to file brief within 15 days thereafter, and Mr. Woods to file reply brief in 10 days thereafter.

Pursuant to order of Court of October 21, 1937 and by agreement of counsel, Mr. Woods and Mr. O'Brien, the following portions of testimony taken before Special
976 Master Carl R. Chindblom are included in the record and considered as a part of the hearing had in open court.

C. F. BOERGER, called as a witness on behalf of the Bondholders Committee, being duly sworn, testified.

Direct Examination by Mr. O'Brien.

I live at 1526 Thelma Avenue, Chicago, and am in the Depository Division of City National Bank and Trust Company of Chicago, which is a depositary for the First Mortgage Bondholders Committee of the Granada. There is presently on deposit a total of $334,900 par value bonds. I believe the unsubordinated portion of the outstanding bonds is $485,500. Bonds on deposit consist of 119 bonds of $100 denomination, 393 bonds of $500 denomination and 194 bonds of $100 denomination. Services involve taking these deposits as follows: Bonds are presented for deposit over the counter or through the mail. It involves the examination of the bonds for negotiability and coupons, the name and address of the depositor for the purpose of issuing a certificate, the maintenance of record of that deposi-

tor and the custody of the bond in our vaults, and the
977 delivery of the certificate either by registered mail or over the counter and the treatment and examination of the deposited bonds and records supporting them by the various bank auditors and other examiners. Frequently transfers are made from time to time by the holders who have sold or in other manner disposed of their holdings by reason of succession by legal representations and other issues. We keep a record of those transfers. Out of total of 450 Certificates of Deposit that were issued, 71 represented transfers. The balance of 379 represent original deposits. 20 of those 71 transfers involved examination of legal disposition and other supporting papers.

The further services which the Depositary has to render in order to help carry out the Plan as confirmed include disposition of the deposited bonds, the additional transfers that may be required during the Plan and new securities will have to be delivered to holders of Certificates of Deposit. That will involve custody of the new securities for an undetermined length of time and the cancellation off the records of the depositors of the old certificates.

These bonds have been deposited with us over a period
978 of more than four and one-half years. At the end of the second year there was on deposit with us $300,000 which gradually increased up until the present total of $334,900. There will be other details which may arise in the handling of the account, such as arise with certificate holders in the frequent transfers of the new securities that will be necessary by reason of the subsequent transfers of a Certificate of Deposit. That will mean that the Depositary will be obliged to requisition the Agent of the new corporation for such new securities as may be necessary which will be supported by the transfer of certificates. This issue was one in which one of the predecessor Banks participated in the underwriting. We have a special way of figuring the charges in such a case.

I have had experience in the matter of Depositary fees and charges in cases similar to the one presented here. From that experience the fair, usual, reasonable and customary charge made by depositaries in Chicago during the period in question for similar services in like cases would be, in my opinion, $4,900. In this case, in which one of the predecessor Banks participated in the underwriting, City National does not charge the same rate. Here one of the

predecessor Banks participated in the underwriting.
979 In my opinion, the fair, usual, customary and reasonable charge would amount to approximately $3,200. The fee charge that I mentioned is the one commonly referred to or established by the so-called "Corporate Fiduciary Schedule."

Cross-Examination by Mr. Woods.

I am not a member of the Committee. Two members of the Committee, Mr. Tuttle and Mr. Sturm, are in our Reorganization Division, which is part of the Trust Department. The Depositary Division of the Bank did the work which I have related. The Committee members did not work in the Depositary Division. They were separate and distinct from the Depositary. The Committee as such could not perform any of the services which I have related as the services of the Depositary.

I believe that the original Deposit Agreement showed that we were appointed the Depositary. In addition, from time to time we were called on by the Committee to perform services.

I do not have any of those written instructions or directions here, but there are such instructions signed by members of the Committee. I don't recall how many such directions I have seen. I recall the original Deposit Agreement, but to be specific as to any one or single direction I would have to see it. I don't recall any. The Bank
980 accepts the appointment as Depositary from the Committee. The City National Bank is named in the Deposit Agreement. We rely on the Deposit Agreement of the Committee for whom we are acting as agent in our duties as Depositary. We have a file containing written instructions about it. Those instructions may have to do with some of the duties of the Depositary, such as waiving certain missing coupons, issuing a Certificate of Deposit to some corporation or some association and a corporate resolution or anything that might have to do with something not ordinarily passed upon by the Depositary without giving its principals' direction.

I don't recall any particular document in this case at the present time. I couldn't say what part of the services were rendered since the filing of this petition in April, 1937 without examining the records as to the volume, etc. Ordinarily the basis of charge is on the volume of activity, the number of bonds, the par value of the bonds deposited, and the

number of certificates issued. I can't say without examining the records as to whether there has been any change since this proceeding was pending in the number of certificates deposited. I don't recall any withdrawals since April of this year. I recall that new bonds were de-
981 posited since April but I was not told the amount. I would say it was relatively small. I would say there has been activity in our duties since this proceeding was started in the sense that bonds have been examined at three different times by examiners coming into the Bank since that time. We paid the salaries of the bank examiners every day they were in the Bank. I can't answer as to whether we expect this Court to pay the State Bank Examiners for examining the records of our institution.

The plan of Reorganization was not made in our Department. I presume it was done by the Committee or by some one at the Bank. As I understand, the Reorganization Division makes up the plans. I would say that it is part of the work done by the Committee. We were not charging for that in our Depositary fee request. I am not familiar with the Committee's petition. We don't include that in our estimate of the charges we are asking for services as Depositary.

I would say that most of the services, the actual duties of the Depositary, were performed prior to April 19, 1937. However, the amount that I mentioned that would be Depositary's fees in this connection also includes the delivery of new securities, which has not been done yet. That
982 involves as much detail in the handling as the original acceptance of the bonds and the issuance of the certificates. I include in my figure such services as may be performed by the Depositary in delivering new securities to holders of Certificates of Deposit, who have deposited under the Plan.

I believe the City National Bank and Trust Company also acted as Trustee in this issue. This petition does not ask for any compensation for those services.

Cross-Examination by the Master.

The work of the Depositary consisted mainly of receiving and recording bonds, issuing in lieu thereof Certificates of Deposit, keeping the bonds and answering inquiries as they came in. Thereafter there would be further services to be performed by the Depositary through the issuance of new securities or the return of the bonds. For those serv-

ices we would ordinarily charge approximately $4,900, which would be the charge if the bond issue were not one that originated with one of the predecessor Banks of the City National Bank and Trust Company. We are actually asking for $3,200.

We issued approximately 450 Certificates of Deposit.
706 is the total number of bonds deposited with us. We
983 issued 450 certificates altogether which actually cover the bonds to the extent of 379. Out of 450 certificates
71 represented transfers to certificate holders who did not represent original depositors.

Cross-Examination Resumed by Mr. Woods.

In the work of the City National Bank as Depositary we had available all of the records filed by the City National as Trustee. They were in the same office. I don't know that we ever used them.

Recross Examination by the Master.

The work of the Depositary commenced and proceeded with the bonds which were deposited and for which the Certificates of Deposit were issued. The work of the Depositary did not relate to anything but the bonds and was in connection with the certificates issued for them.

Redirect Examination by Mr. O'Brien.

The records that the Trustee had were not those of the kind that the Depositary keeps.

984 WILLIAM G. STURM called as a witness before the Special Master, testified:

Direct Examination by Mr. O'Brien.

I live in Chicago and have been sworn to testify here and have testified in the general hearings in this case before Judge Barnes. I am a member of the Committee for the protection of the holders of the first mortgage bonds of the issue involved here. I subscribed and executed the petition filed by the Committee here on the question of administrative charges. The items set forth in Exhibit "A"

to that petition were disbursed by the committee for the purpose indicated in the Exhibit.

The Committee had to borrow the money from the City National Bank and Trust Company of Chicago. The Committee has no office space or quarters except the space that it uses in the City National Bank and Trust Company and has used from the time of its organization in April, 1933. It has also used the personnel of the City National Bank and Trust Company under an arrangement with the Committee to reimburse the bank for the proper charges of that service. It was agreed that we would reimburse the bank for the cost of that service as well as it could be determined.

Our method of determining that cost is predica d on
the number of people that are employed in the reor-
985 ganization department, the space it occupies, the fa-
cilities that the bank places at the disposal of the committee in the way of regular office services; of telephone, filing services, all of the facilities that would go along with it and which the bank has; credit information for taking care of insurance, to see that it is filed and properly taken care of, other files for all of our records, stenographic help, and many other things I don't recall at this time. Anyhow, it makes all the facilities and personnel available to the committee in order to complete a bond issue of this kind. More particularly that would be set forth in Mr. Johnson's testimony before Judge Barnes.

We had and still have a Granada division. After having given very careful consideration to the question of apportioned cost to a specific issue we decided the only fair and appropriate way to do that was on the basis of the total bonds serviced and an allocation of the cost on that basis to each issue.

On that basis the cost is computed as finally as we can determine it at around 2% on the face of the bonds.

Cross-Examination by the Master.

On the basis of our cost, our fee, and request for fees should be $10,000 and that is requested. That covers services rendered by the bank to the Committee in the way of
space, room space, facilities, personnel, accounting and
986 everything of that sort. It does not include anything
for the members of the Committee individually. The members of the Committee individually are not asking,

nor do they receive, any part of the fee requested. Two members of the Committee, Mr. Tuttle and myself, are employed by the bank. The other three are not. We receive no part of this compensation requested, directly or indirectly. We are employees of the City National Bank and Trust Company and receive our salaries as such.

The depositary charge is not included in this fee. The fee of $10,000, which is requested will go to the City National Bank and Trust Company of Chicago and will be credited in the first instance to the Trust Department. If there are any profits, it will be profits to the City National Bank and Trust Company and that is true of the loss, if there is a loss. I don't know whether the $10,000 will cover the complete work here.

Cross-Examination by Mr. Woods.

I testified at the hearing before Judge Barnes and heard part of the testimony of other persons there from the City National Bank. I didn't hear all of it. I do not wish to change any of my testimony or any of their testimony which I heard.

I am afraid that I cannot state which of the items, if any, in the Schedule attached to our petition, which totals $2,285.21, pertain to matters after the filing of this proceeding here on April 19, 1937. The different items
987 are not indicated by date and it may be that none of them were incurred after the filing of the petition in these proceedings. I am not sure, but my impression is that all of these items represent transactions prior to the time that the present matter came into court. I would have to look at the records. I presume that there are items like mailing of the plan and postage and other things in this proceeding which are items of expense subsequent to the filing of these proceedings.

There is attorneys' expense re trips to Danville of $29.26 and court reporter. The court reporter was in this proceeding. There have been court reporter's transcripts of the various proceedings had before the Federal Court both on the involuntary and on the voluntary proceedings.

"Mr. Woods: Well, the court trustee is going to take the position that none of those items there were with regard to these hotel proceedings, unless they can show they paid the money while these proceedings were pending, because they have been in former litigation, of various sorts, and

paid out money of various sorts, and all of those items pertain to the former litigation.

"Mr. O'Brien: That is so on the face of it, that is right; that raises a law point which is for the Court to decide."

(Witness resuming.) The Committee out of a fund of its own paid the expenses, which are shown in Exhibit 1
988 attached to the petition which indicates various items totalling the sum of $2,285.21. If the money came from the bank it was loaned to the Committee and thereupon was paid by the committee.

Those expenses in the amount of $2,285.21 are not included as a part of the $10,000 we are asking for. There are three items the committee is asking compensation for —one item of $10,000, out-of-pocket expenses of $2,285.21 and the fee requested by the City National Bank as Depositary, which has heretofore been presented by Mr. Boerger, requesting the amount of $3,200 as such fee for depositary.

The Committee is asking that the items be paid to them so that they can discharge its obligation to the bank and reimburse them. The money that we expended was Committee money. The fact that we borrowed from the City National Bank means we are liable and must repay the City National Bank, but the money expended was committee money.

I would have to check the files but I am sure we gave a note for it. The bonds were pledged for it. We used the facilities of the bank for keeping accounts and issuing checks and things of that kind. Committee as such does not have a bank account of our own and don't draw checks. The bank does it for us on the order and direction of Committee. We took a note in respect of the Granada matter as in any other case with a pledge agreement. The note was not for a blank amount but for a specific amount.
989 We may use $200.00 and then give the bank a note for $200.00. If we use $200.00 more we take a new note and give it for $400.00. We make a new note every time we have to take out money with the exception of cases where they are nominal amounts. Nominal amounts we might let them accumulate until it makes it worth while as a transaction and then do it.

I cannot answer how recently we have signed such a note nor whether we have signed such a note since April without checking the records. There are too many things cross-

ing my desk for me to recall a thing like that. Committee has not received any monies or reimbursement from any of the depositing bondholders at any time that I can recall. It has not received any funds from any source except the funds that it has borrowed or pledged itself to secure, from the City National Bank and Trust Company that I can recall.

The $10,000 requested was for services in this case here. We feel we should have reimbursement for our costs which goes back for services in contemplation of these proceedings, and in these proceedings.

This $10,000 reaches back to the time the Committee was appointed in 1933. As far as anything we did at that time was in contemplation of these proceedings. It is very difficult for me to say what part of it applies to the period since May 24, when the committee became a party to these proceedings by intervention.

990 *Recross Examination by the Master.*

Out of the total indebtedness of $525,000, bonds, in the amount of $331,600 were actually deposited with the committee. We are basing our 2% charge upon the amount of indebtedness without reference to the amount of bonds they have deposited with us. Had we only obtained $50,000 of bonds, I take it that the reorganization would have failed. This reorganization benefits and works out 100% for all of the bondholders. Our efforts were directed to that particular thing. We are claiming 2% of the total indebtedness on the theory that this is a reorganization accomplished by our committee for the benefit of all of the bondholders.

Cross-Examination by Mr. Goldberg.

I take it for granted we would not have been in court if the debtor corporation had not filed a voluntary petition. I didn't mean to infer anything to the contrary or take credit for everything ourselves.

MR. VINCENT O'BRIEN, is a witness on behalf of petitioners, being duly sworn, testified:

991 My name is Vincent O'Brien. I am an attorney at law, duly licensed to practice at the Illinois Bar in 1920, and a member of the firm of Defrees, Buckingham, Jones & Hoffman. Our firm is counsel for City National Bank and Trust Company of Chicago, as Trustee under the first mortgage indenture, and also for the first mortgage bondholders' committee. Prior to the appointment of the City National Bank and Trust Company of Chicago, as Successor Trustee, we represented its predecessor in trust, Central Republic Trust Company, formerly known as Central Republic Bank and Trust Company:

We have filed our petition for the allowance of reasonable fees on account of services rendered by us for the Committee in this proceeding. The services rendered by us for the Successor Trustee and its predecessor in trust are included in Claim No. 9 heretofore filed by City National Bank and Trust Company of Chicago, as Trustee,

992 more particularly in paragraph 5 of said Claim as amended, which is predicated on the decree of sale entered December 18, 1936, in the foreclosure proceedings numbered 519151 pending in the Superior Court of Cook County. The Trustee in Bankruptcy filed objections to the latter Claim, which have been set for hearing at the same time as the fee petitions filed by the various parties. The Trustee has also filed a counterclaim against City National Bank and Trust Company of Chicago, which was heard by the Court and is pending and undetermined. At the same hearing the report and account of the City National Bank and Trust Company of Chicago which was presented by us was heard, together with the objections of the Trustee in Bankruptcy thereto, and the Court likewise has the report and account under advisement, briefs to be filed and the matter to be orally argued by counsel.

Among other things the counterclaim filed by the Trustee in Bankruptcy relates to an item of $3,857.79 paid by City National Bank and Trust Company of Chicago out of funds in its possession as Trustee for our attorneys' fees and expenses incurred in the old 77B action, the Harris-Tuttle case. The petition filed by us for services rendered to the Committee does not include that item on account of its previous payment. In the event of disposition of this item of the counterclaim favorable to the Trustee in Bank-

ruptcy, both we and the Committee will have to seek
993 leave to file a supplemental petition. Moreover, extensive services have been necessarily performed by City National Bank and Trust Company of Chicago, as Successor Trustee, and ourselves as its counsel in the matter of the preparation of and hearing on the report and account of the Indenture Trustee and the objections and counterclaim thereto, and those services are not yet concluded and therefore no separate petition for that work has been presented.

I shall give a complete statement as to all services, however, and in doing so I wish to point out that we are willing that the Court here fix the reasonableness of the charge for services rendered by us in the state court proceedings on behalf of the Indenture Trustee notwithstanding the existing limitations upon the Federal Court's right to review the allowance for such services made by the state court in the decree of sale. In other words, while the fees fixed by the state court stand as a claim, yet we waive that position and submit the entire matter de novo to this court.

Services on Behalf of the City National Bank and Trust Company of Chicago, as Successor Trustee, and of Central Republic Trust Company, Predecessor Trustee, Rendered Prior to the Proceedings Here.

The first mortgage issue was underwritten in September of 1928 three-fifths by Cody Trust Company and two-
994 fifths by Chicago Trust Company, which latter Company was named as Trustee in the mortgage indenture. The issue was for $525,000, of which $25,000 in bonds were subordinated at the time of issuance. The bonds matured serially, the first default occurring March 1, 1932, leaving $485,500 of unsubordinated bonds outstanding in addition to the $25,000 of subordinated. They are still outstanding and unpaid. About the same time Granada Hotel Corporation issued $360,000 of second mortgage bonds, of which $357,000 remain outstanding and unpaid. Its other indebtedness is as set forth at page 8 of the notice and plan of reorganization filed in these proceedings. The hotel premises, furniture and furnishings, being the chief property of the Debtor in these proceedings, are worth approximately $400,000, as shown by the record in these proceedings.

The furniture, furnishings and equipment were not paid for out of proceeds of the first mortgage loan, but part of the purchase price was paid in cash by Granada Hotel Corporation to Albert Pick & Company and a first chattel mortgage was taken by Albert Pick & Company to secure pay-

ment of the balance. The validity of the Pick chattel having been questioned, proceedings had been brought in the United States District Court to restrain Pick from enforcing its chattel mortgage, which proceedings were ultimately
995 determined in Pick's favor after appeal to the United States Circuit Court of Appeals and after certiorari denied by the United States Supreme Court. In this situation proceedings for the partial foreclosure of the second mortgage were brought in the Superior Court of Cook County, and Chicago Trust Company as Trustee under the first mortgage was joined as defendant and Chicago Title and Trust Company appointed Receiver in said action. Chicago Trust Company later consolidated with Central Trust Company of Illinois to form Central Republic Bank and Trust Company, which by operation of law and by the express terms of the first mortgage indenture became successor trustee and which later changed its name to Central Republic Trust Company. The latter Company was then substituted for Chicago Trust Company as defendant in said proceedings.

Albert Pick & Company filed its intervening petition in said foreclosure proceedings asking an order directing the Receiver to surrender to it all of the furniture, furnishings and equipment in the said premises, but this only after Pick had attempted to remove its alleged property without leave of court, so that we were compelled by way of petition to procure a restraining order. We prepared and filed the answer of the Trustee to the Pick intervening petition and set forth facts showing that the ozite, carpets, in-a-door beds, kitchen and china cases were fixtures and part of the real estate mortgage security and not subject to the Pick chattel mortgage. The furniture and furnishings be-
996 longing to Pick were surrendered by the Receiver but only after we had procured an order of court prescribing the method of removal and so arranging the time as to permit the refurnishing of the property. The matter was so handled that the apartments were completed refurnished without loss of any of the tenants. The question as to whether the items above specified were fixtures or removable personal property was reserved by the court and later tried, the trial lasting for about three weeks, after which the matter was orally argued and voluminous briefs were prepared and submitted by both sides. The court took the matter under advisement and on January 15, 1932 found in favor of Albert Pick & Company and entered a decree ordering the Receiver forthwith to surrender the equipment

items to International and Industrial Securities Corporation, Pick's assignee, and reserved jurisdiction to determine the amount of compensation to be paid by the Receiver for the use of the property pending the litigation. The indenture trustee appealed from that decree to the Appellate Court of Illinois in and for the First District, prepared the record, which was quite voluminous, and prepared and filed its abstracts and briefs. The full abstract has heretofore been received in evidence in these proceedings. The matter was orally argued before the Appellate Court, which afterwards on March 14, 1933 published its opinion affirming the decree. We then applied to the Supreme Court of Illinois for a writ of certiorari and prepared an abstract of the complete record for the Supreme Court, and also filed
997 a brief in support of the petition. Certiorari was denied on .....

Prior to the time that the Appellate Court rendered its decision I had numerous conferences with the parties in interest in an attempt to effect a settlement, those parties including Cody Trust Company, Central Republic Trust Company, Wenstrand, Hall, Granada Apartments, Inc., on the one side, And Ringer, Wilhartz & Hirsch and Schanfarber on behalf of Pick's assignee. At about that time Pick was seeking to recover on a suggestion of damages filed against the surety company on the appeal and injunction bonds in the United States District Court proceedings above referred to. I believe that Wenstrand was really acting for Cody Trust Company in those proceedings. Hiram Cody and Lewis Riddle had given the surety company an indemnity agreement, but by 1933 Cody Trust Company was insolvent. Schanfarber was insistent on obtaining a settlement of the entire matter and demanded over $50,000. We were interested merely in purchasing the fixtures and after long negotiation got Schanfarber to agree to take $22,500 for those items. Then we found that we could not get the money. The Receiver did not have enough money on hand; Cody Trust Company was insolvent; and the Central Republic Trust Company, which might have lent the money by way of a trustee advance, had during 1932 pledged all of its assets to the Reconstruction Finance
998 Corporation to secure a large loan. Nor was there anywhere else to get the money, for during the year 1933 it was not possible to procure financing of a normal kind, let alone Receiver's certificates of indebtedness. The only person who had any reason for considering a loan was the surety company and the inducement would be to get

the suggestion of damages dismissed. To this end I again conferred with Schanfarber and showed him that his claim against the surety company was not substantial, first, because the bonds did not properly include attorneys' fees since that condition was in excess of the one provided by the United States statutes; second, because the restraining order had been in effect for only a very short period and not during the period that the cause was pending in the Court of Appeals and the United States Supreme Court. The reason was that the appeal bond was merely a cost bond and not a supersedeas, since it is the rule in the District Court that an appeal from a decree dissolving an injunction may not operate as a supersedeas unless an order be entered reinstating the injunction pending the appeal. There had been no such order. On this showing Schanfarber agreed to drop the suggestion of damages against the surety company if the fixtures items were purchased on the basis previously agreed upon, but this was only after he attempted to procure a larger amount. Schanfarber also agreed to satisfy the deficiency decree for in excess
999 of $50,000 against Granada Hotel Corporation and to dismiss the proceedings then pending for the appointment of a Receiver for that corporation; also to waive his claim for rent for the use of the property pending the state court litigation. I took this up with the Surety Company through its attorney, Wendell Shanner, and after full consideration the company agreed to advance $11,500 on security of Receiver's certificate of indebtedness if the court in the foreclosure proceedings would direct the issuance of such certificate and on condition of course that the suggestion of damages be dismissed. I then conferred with the Central Republic Trust Company and the other parties in interest and prepared a petition for the issuance of Receiver's certificate and for authority to the Receiver to purchase the fixtures items for $22,500.

This was not accomplished until August of 1933, by which time the Supreme Court had denied certiorari in the fixture litigation. Before I presented that petition I conferred with Mr. Murphy and Mr. Young and also Mr. Hall, and I had an inventory and appraisal made of all of the furniture, furnishings and equipment at the Granada, which is the same inventory and appraisal that I attempted to offer in evidence before Judge Barnes. I wished to know, as did the Central Republic Trust Company, what these items were then worth. I then presented the petition, together with the stipulation of the parties

in interest, and the court authorized the purchase of
1000 the fixtures and the issuance of the Receiver's certificate, after which the terms of the settlement were carried out. The beds and kitchen cases which were included in the settlement had been specially fabricated for the building, the company which had manufactured them was out of business, and they could not have been procured elsewhere. If we had permitted the property to be removed as decreed we would have lost the tenants, would have been compelled to repair the damage, redecorate the apartments and buy new equipment.

Pending discussion of the Pick settlement the Skarda law was enacted under which provision was made for the appointment of the County Treasurer as receiver to collect rents to satisfy taxes. Two proceedings for this purpose were brought in the County Court of Cook County and on behalf of the Trustee we were compelled to defend against the appointment of a tax receiver. It was not considered that the County Treasurer had a lien upon income for the payment of taxes, nor was it our opinion that the County Court of Cook County, Illinois had power and jurisdiction to appoint a receiver. Taxes were unpaid in a substantial amount, but objections to the validity of the assessments were pending and undisposed of. If the property was to produce income with which to pay taxes and with which to reduce other existing liens, it was imperative that it be kept occupied, which could be done only through the Pick settlement. Accordingly, pending discussion and nego-
1001 tiation, income was segregated in an amount sufficient, together with the proceeds of the Receiver's certificate of indebtedness, to pay the purchase price for the equipment items, and this segregation was effected through an escrow arrangement established at the City National Bank and Trust Company of Chicago, which later paid the sum of $13,000 to the Receiver for the purpose of the settlement.

We were compelled to appear before the County Court on numerous occasions until the Supreme Court of Illinois held that the County Court was without jurisdiction to appoint a receiver, after which a new action for a Skarda receiver was instituted in the Circuit Court of Cook County, Illinois, where such arrangement was made with the County Treasurer and the State's Attorney as to avoid the appointment of a tax receiver upon deposit from month to month of satisfactory payments.

At the time of the entry of the order authorizing the issuance of the Receiver's certificate of indebtedness the state court also authorized the receiver to pay to us $2,000 on account of our services for the Trustee in the fixture litigation, and that amount was so paid.

Pending the Pick litigation in the United States District Court approximately one-half of the Pick furniture (exclusive of said equipment items) had been removed to the basement of the premises and new furniture had
1002 been provided by the debtor corporation. Under the terms of the first mortgage trust deed the mortgagor had covenanted and agreed to give to the Trustee a good and sufficient chattel mortgage on all furniture nad equipment, and had covenanted to renew the same from time to time, all as additional security for the payment of the first mortgage indebtedness. Prior to the conclusion of the Pick equipment settlement as aforesaid we insisted upon, and obtained from the debtor corporation and all other parties in interest excepting Elof Wenstrand, execution of the chattel mortgage and note described in the plan herein, which chattel mortgage and note we prepared. Shortly after the consummation of the Pick settlement we procured Wenstrand's signature to transfer such interest as he might have. As a result, for the first time, the furniture and equipment was held by the Trustee as further security for the payment of the first mortgage indebtedness, subject of course to the Receiver's certificate and to the conditional sales contract hereinafter mentioned.

Cody Trust Company went into receivership in December of 1933. At the time of the appointment of Chicago Title and Trust Company as Receiver it had been represented to the Receiver by Cody Trust Company that the receivership would be of relatively short duration and was to be handled for less than the usual charge. The Chicago Title and Trust Company was unable to continue any longer on that basis and the Central Republic Trust Company was willing to take possession as Trustee. Ac-
1003 cordingly, in April of 1934 a stipulation was entered into by all of the parties, including the holder of the Receiver's certificate of indebtedness, in and by which it was agreed that the Receiver forthwith surrender possession to the Trustee, later file its final report and account on the coming in and approval of which it was directed, after payment of its fees and those of its counsel to be fixed by the court, to pay $2500 to Central Republic Trust

Company as Trustee, deemed to be necessary for working capital, and pay the balance in reduction of the amount due on the Receiver's certificate of indebtedness. It did make these payments and its account was filed and approved and the Receiver discharged. Under the arrangement in effect it requested, and was allowed, $3,000 in full of its fees and $300 in full of those of its attorneys, notwithstanding that the gross collections for the period of the receivership amounted to in excess of $200,000. In the same order it was of course directed that the Central Republic Trust Company assume payment of the balance due on the Receiver's certificate of indebtedness which matured by its terms in August of 1936.

At the time the Trustee took possession there was approximately $19,000 due on the conditional sales contract given by the debtor corporation to secure payment of the balance of the purchase price on account of new furniture. Central Republic Trust Company as Trustee, and later its successor in trust, City National Bank and Trust Company of Chicago, continued to hold and to operate the
1004 property until surrender of possession to the Trustee in Bankruptcy in this proceeding. During the period of the possession of the Trustee there was paid by the Trustee on account of general taxes the sum of $32,969.41. The Receiver's certificate of indebtedness was reduced to $4,000 and the conditional sales contract to $3,000. The premises were put and maintained in a good state of repair and preserved for the benefit of the bondholders.

In July of 1933, public default having been made in the payment of both principal and interest due under the first mortgage, Central Republic Trust Company, as Trustee for the benefit of all parties entitled to the security of said trust deed, brought its cross-bill of complaint, which we prepared, in said foreclosure proceedings, to foreclose the entire issue, and joined as cross-defendants all parties having any right, title, interest or lien in the property. Process was issued for the cross-defendants, and they were personally served or entered their appearances. By way of supplement to the cross-bill the chattel mortgage so obtained was likewise sought to be foreclosed. Painstaking efforts were made to ascertain the names and addresses of the holders of the various junior interests and to get them into the proceedings personally. By November of 1933 the case was at issue on the cross-bill, and we pre-

pared notice and order for default and references and had the cause referred for hearing.

1005 Early in 1934 the Appellate Court of Illinois in and for the First District, in the case of Straus *vs.* Anderson, held that the Trustee under a mortgage indenture might, even in the absence of express authority, on a proper showing bid in the mortgaged property at a foreclosure sale for the benefit of all of the bondholders, and it further held that it was its duty so to do when directed by the court. The Trustee conferred with us as to the meaning and effect of this opinion and we briefed the question very thoroughly and recommended that the Trustee seek the instructions of the court in the premises. To that end we prepared an extensive amendment to the cross-complaint, setting up the facts and conditions and the mortgage provisions, and requested the instructions of the court as to whether the Trustee had the power to bid and as to whether under all of the circumstances it should exercise the power. We also prepared a notice of the motion for leave to file the amendment, an order in respect of the same, and the requisite additional summons and affidavits, for in so far as the cross-complaint as amended sought the directions of the court in respect of the trust property it was considered that the bondholders must be joined, and that was done through joinder of the first mortgage bondholders committee and through joinder as cross-defendants of a group of nondepositing bondholders who were representative of the whole class. It was necessary to get service on these additional defendants and

1006 a great deal of effort was expended in doing so until the cross-bill as amended was again brought to issue and re-referred for hearing. But before this was accomplished the Auditor of Public Accounts of the State of Illinois appointed a receiver for Central Republic Trust Company, one William L. O'Connell, and it was not possible to go forward with the suit until Mr. O'Connell had a reasonable time within which to resign the trusteeship on behalf of Central Republic Trust Company. Chicago Title and Trust Company was named as successor Trustee in the indenture but was unwilling to act. A great deal of time was necessarily spent in conferring with the Receiver's deputy, Mr. Charles H. Albers, with the Receiver's counsel, Igoe & Flaherty, and with their various associates, in respect of the mode, time and place of resignation and the settlement of the account which the Receiver was compelled to file on behalf of the Central Re-

public Trust Company. We personally handled all of those conferences and it was concluded, after carefully briefing the question, that the resignation should be filed before the court which had jurisdiction of the property and of all of the parties and that that court should appoint the successor trustee and consider the account which the Receiver was to file on behalf of the predecessor in trust. Accordingly, a petition was filed on behalf of the bond-
holders' committee setting up the facts and request-
1007 ing the appointment of a successor trustee. We ap-
peared in court a number of times on due notice, and prepared the order of appointment in which City National Bank and Trust Company of Chicago was designated by the court as successor trustee. We later appeared in court on the presentation by the Receiver of the account of the Central Republic Trust Company, and the Receiver upon the approval thereof was directed to, and did, turn over the funds in his possession to the Successor Trustee. It was then of course necessary to prepare and get leave to file a supplement to the cross-complaint substituting City National Bank and Trust Company of Chicago as cross-complainant, and that was done. In the meantime we had prepared the resignation to be signed by the Receiver, the refusal of the Chicago Title and Trust Company to act, and the various instruments of conveyance and assignment necessary to vest the title in the Successor Trustee.

At about the time that this was completed and the cause again ready for hearing an involuntary petition was filed at Danville under Section 77B, purporting to be predicated not on any act of bankruptcy and not on any pending equity receivership but merely on the pending foreclosure proceedings. This bankruptcy proceeding having been called to our attention we procured a copy of the petition, conferred with the title officers of the Chicago Title and
Trust Company, and studied the law in reference to
1008 the jurisdiction of the court and in relation to the
validity of the proceedings, especially in respect of the ultimate title to be derived through any reorganization had in such proceedings, and concluded that the proceedings and such title would be invalid unless the debtor corporation would appear and put in an answer amounting in effect to a voluntary petition, but found that Granada Hotel Corporation, against whom the petition was brought, had been dissolved long prior to the filing of the petition and that the owners of the stock of Granada Apartments, Inc.,

were then, as they always had been, unwilling to file a voluntary petition. As a matter of fact, when, a couple of months later, the same creditors filed an involuntary petition on the same grounds against Granada Apartments, Inc., the corporation defended through its own counsel on the ground that the court was without jurisdiction. To attempt a reorganization in this situation was only to further complicate matters, and accordingly we were directed by the Trustee and the committee to oppose the proceedings, which we did through an intervening petition prepared by us and filed on special appearance before Judge Lindley, raising the jurisdictional point and, through an intervening petition filed in the name of the Trustee, denying the right of the court to take possession of the property. Notwithstanding which the petition was approved by Judge
Lindley in the Granada Hotel Corporation case. Im-
1009 mediately Judge Lindley vacated his orders and
called for briefs, which we prepared and furnished, on consideration of which Judge Lindley in a memorandum opinion filed in the cause approved the petition as properly filed, appointed a Trustee to investigate, but refused to restrain the prosecution of the state court action to decree.

At the direction of the Trustee and the committee, we appealed to the United States Circuit Court of Appeals for this Circuit, and on affirmance of the order by certiorari to the United States Supreme Court, in both of which courts we filed the records of the proceedings and prepared the necessary abstracts and briefs, in each instance the cause being orally argued. The United States Supreme Court reversed the lower courts and held that there was no jurisdiction. Accordingly the Granada Hotel Corporation case was then dismissed by this court, having been transferred here by Judge Lindley. The proceeding against Granada Apartments, Inc. had been held in abeyance pending the outcome of the Granada Hotel Corporation case, and after the decision by the Supreme Court in the latter case motion was made at Danville to dismiss the case against Granada Apartments, Inc., and we attended at Danville for that purpose.

The petitioners took leave to amend their petition. We moved to dismiss the petition as amended, for it was no
better than the original one. Judge Lindley had that
1010 motion under advisement until the time the cause was
transferred here, where it was dismissed by Judge Barnes. For the services thus necessarily rendered in the

old bankruptcy proceedings we were paid by City National Bank and Trust Company the sum of $3500 on April 13, 1936, which amount in my opinion was an exceedingly reasonable charge for the service necessarily required and rendered by us.

By this time the Illinois Supreme Court had reversed the Appellate Court and it held that a mortgage trustee was without power or right to bid in on behalf of its bondholders at a mortgage foreclosure sale in the absence of clear and express authority contained in the trust deed permitting it so to do. The conventional foreclosure proofs had been completed before the master, but until further progress was made by the committee towards working out a reorganization agreement the entry of the decree of sale was deferred. By December of 1936 the committee advised us that it was likely that a plan would be worked out and authorized the entry of the decree of sale, which was prepared and entered December 18, 1936. That decree, a voluminous document, was in course of preparation and checking over a period of about three weeks, and is in evidence in this proceeding. Subsequent to the entry of the decree we procured a later date letter of opinion from the Chicago Title and Trust Company and were compelled to spend weeks of time in supplying information and data necessary to procure the removal of various objections, including among other things the locating and cancellation of various paid bonds and coupons ultimately found in many different places, all of which services will be of assistance in making good title through the proceedings here.

1011

In February of 1936 we were advised by the debtor corporation of a suit brought against it in the Municipal Court of Chicago by one Rosenberg on account of certain first mortgage bonds. We checked that proceeding and followed it from time to time until judgment was entered against Granada Apartments, Inc. Later we were informed of Rosenberg's suit against the corporation for the appointment of a receiver and for liquidation brought in the Circuit Court of Cook County, Illinois. We attended before Judge Feinberg at the time of the motion for such receiver and prepared the portion of the order which made the Receiver's rights to possession and otherwise subject to the rights of City National Bank and Trust Company of Chicago, as Trustee. At the same time we conferred with Mr. Wenstrand, who claimed to represent the group which controlled the stock of Granada Apartments, Inc., and recommended that he cause the corporation to file a voluntary

petition in bankruptcy. Later and as a result of our activities, Granada Apartments, Inc., filed its voluntary petition in these proceedings.

In connection with the services so rendered on behalf of the Trustee and its predecessor in trust, we had innumerable conferences and telephone conversations and
1012 voluminous correspondence which I am not attempting to detail here, and there was necessarily spent in the rendering of such service 736 hours of time exclusive of the time spent in the fixture litigation with Pick.

Services on Behalf of the Indenture Trustee Subsequent to the Filing of the Petitions in Bankruptcy.

Upon learning of the filing of the new involuntary petition at Danville and later of the voluntary petition here, we conferred with the trustee and with representatives of the majority of the junior interests, obtained copies of the petitions, and were satisfied that a prompt reorganization could be effected. Petitioners were pressing their petitions in the respective jurisdictions and we conferred with the attorneys for the petitioning creditors in the proceeding at Danville and informed them that the Indenture trustee would retain possession of the property pending confirmation of any plan. We appeared at Danville on the hearing there held on motion for the approval of the petitions and on opposing motions for the transfer of the cause to this District. We took no part in the hearing on the motion for the approval of the petition but advised the court on his inquiry of the entry of the decree of sale and of the fact of the possession by the Trustee under the indenture.

When Judge Lindley transferred the cause here we attended before Judge Barnes on the proceedings had in
1013 connection with the approval of the petitions. We made no objection to their approval but had prepared and did file the petition of the Indenture Trustee setting up the fact of its possession and of its right to continue in possession pending the proceeding. After that hearing we conferred with the Indenture Trustee and it was decided that the Trustee would waive its right to hold possession and would turn the property over to the Federal Trustee in the interest of an early reorganization, since it was the position of the Court that there would be no reorganization and that the orders approving the petitions would be vacated if the Trustee prevailed in its contention as to its right to hold possession pending confirmation of any plan. We assisted in the preparation of the order approving the petitions and appointing the Federal Trustee and attended

in court at the time of the presentation of the order for entry. Following the entry of the order we informed the Court of our position and that there would be no appeal from the order.

We then conferred with the Federal Trustee and the Indenture Trustee in respect of the turning over of the property and of the approval and payment of various outstanding operating bills. We had many of those bills O. K'd. by the Federal Trustee and paid by the Indenture Trustee out of funds on hand. For a long period and almost every day we had conferences or telephone calls with the Indenture and Federal Trustees in respect of information,
1014 papers and documents which the Federal Trustee was attempting to assemble; also in respect of the disposition of some $30,000 of second mortgage bonds held by the Indenture Trustee as security and various other second mortgage bonds. We likewise conferred with the Trustee and with Mr. Leonard of the City National Bank and Trust Company and others regarding various matters, most of which were later set forth in the answer and counterclaim filed by the Federal Trustee. In the first instance we procured and furnished the Federal Trustee with such information as we had relating to questions concerning those items. We conferred with the Bank regarding its report and account, and prepared its report and account and filed it in these proceedings. On the coming in of the Trustee's objections and counterclaim we spent days in checking the records and obtaining the facts relating to the matters there complained of.

We prepared and had executed and filed the claim of the Indenture Trustee on its own behalf and on behalf of the holders of all bonds and coupons, and expect to prepare and to have executed such documents as may be required of the Trustee in carrying out of the plan of reorganization heretofore confirmed. We were obliged to answer the objections and counterclaim filed by the Trustee. Those objections are of a serious nature and involve among other things large sums of money, by which the Federal Trustee seeks to have the account of the Indenture Trustee surcharged.

1015 The trial on the report and account, objections and counterclaim was only recently had and concluded before Judge Barnes. It extended over a period of approximately three weeks and at its conclusion the Court directed the filing of written briefs and the preparation and filing of propositions of law and findings of fact. We have not

as yet prepared ours but the matter is known to be sufficiently complicated so that the preparation of adequate findings and propositions will undoubtedly take many days time, and following the filing of all briefs the matter is to be orally argued. Until those proceedings are concluded it is not possible accurately to estimate the total time.

Services on Behalf of the Committee.

The Central Republic Trust Company and later the City National Bank and Trust Company of Chicago, as heretofore testified to by Mr. Arnold Johnson, set up and maintained a reorganization division for the purpose of servicing the holders of defaulted bonds of issues underwritten in whole or in part by "predecessor banks", including Central Trust Company of Illinois, Chicago Trust Company, Standard Trust and Savings Bank, and in part the National Bank of the Republic of Chicago. From the time of the default above referred to, the reorganization division, so constituted, had been giving attention to the Granada property, particularly to see that the income was sequestered and particularly in relation to the furniture and
1016 equipment situation above outlined. Early in 1933 Central Republic Trust Company with the cooperation of Cody Trust Company caused a committee to be formed consisting of Charles S. Tuttle, Lewis W. Riddle, William G. Sturm and Edward S. Clark, presently consisting of Charles S. Tuttle, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer. We were requested to and did prepare a deposit agreement, which was dated April 25, 1933, under which City National Bank and Trust Company of Chicago was named as depositary and we were employed by the committee. The deposit agreement is of record in this proceeding. The committee called the bonds for deposit and they were deposited at the times and in the amounts specified by Mr. Boerger in his testimony recently given.

At the outset it was necessary that the committee itself become familiar with the history of the property and with the problems which had arisen. We had numerous conferences with the committee members to give them all data which we possessed. The men assigned by the committee to get the facts performed the service testified to by Mr. Johnson and conferred with us in respect of the title situation so as to determine just what junior interests there were and the names and addresses of the parties in interest.

An exceedingly complicated title situation was disclosed from a reorganization standpoint. The title was vested in the debtor corporation subject to stock objections and subject to unpaid general taxes and pending objections thereto. The first mortgage trust deed secured 1121 bonds
1017 which had been widely sold, in many instances through dealers from whom the names and addresses of the purchasers were not often available. $25,000 of the bonds had been subordinated and separately distributed. There was a second mortgage securing 370 bonds, aggregating $360,000, of which approximately $150,000 were located with three of the loop banks. The remainder of the bonds had been widely distributed, largely to customers and correspondents of Cody Trust Company. We have referred to the Receiver's certificate above, which of course was a lien on the trust property, subject only to taxes and also to the conditional sales contract which was a prior charge on the personal property. There were various unsecured obligations, both of Granada Apartments, Inc., and of Granada Hotel Corporation, some of which were later reflected in claims filed in this proceeding. There were 1,000 shares of common stock which were then controlled by Cody Trust Company and which, while within its control, were always considered available for the purposes of any plan of reorganization. There were an additional 1,000 shares of preferred stock, however, which had been widely distributed and many of which after full investigation proved to be unavailable for the purpose of any plan. Special problems existed because of the fact that the Granada was servicing two other properties with heat, refrigeration and water. We cooperated with the committee in contacting and conferring with various parties in interest with the idea of working out a reorganization agreement under which
1018 all of the junior interests might be deposited. There were times when weeks were spent in our office trying to locate different of the junior items.

Also, because of the history and conditions above outlined, it became a major problem to locate the paid and cancelled paper. This was accomplished after weeks of effort. Through our own efforts we were unable to get the junior interests together for the purpose of a reorganization agreement. Then various parties interested in acquiring the property conferred with us. There were at least five or six such parties, and all of the details were gone over, but in each instance nothing came of these conferences until Wenstrand, supported by Ingersoll, went out and, after

months and months of effort, acquired a substantial portion of the junior interests and claimed to have options to acquire the remainder. It would appear that Wenstrand's objective was to then get sufficient of the first mortgage bonds so as to enable his group to acquire the property. His efforts in that direction ultimately failed, however, because of the reasons as stated by Mr. Johnson, but the fact remained that through his efforts, whatever his motive, the holders of the junior items were located and the holdings considerably solidified, so that when it became necessary to procure assents for the purpose of the plan in this proceeding those efforts were of extreme assistance.

1019 During the period that Wenstrand was seeking to acquire the junior interests and to clear the title, we, as above noted, spent weeks of time on the same objectives. Prior to this and when it seemed impossible to reach a reorganization agreement, we conferred with the committee as to the possibility of proceeding with a conventional foreclosure so as to obtain title for the depositing bondholders through the issuance of a master's deed. That was not a feasible remedy, however, for there were too many bonds outstanding and too many prior obligations. Nor was the necessary financing available during the years 1933 and 1934.

In this situation we conferred with the committee as to the possibility of the Trustee's bidding in for the benefit of the bondholders so as to eliminate the junior interests through the issuance of master's deed, having in mind that the Trustee would then re-sell the property so that it might be acquired or liquidated for the benefit of the depositing bondholders. The committee was quite willing to attempt that, and it was then that the amendment for that purpose was filed on behalf of the Trustee as above stated. Later, the Supreme Court of Illinois having held that the Trustee was without power to make such bid, we again conferred with the committee and with Wenstrand and others in respect of a 90-10 parity deal, at which time it looked as though Wenstrand could deliver the junior interests for that purpose. After very considerable effort in this direction it developed that there was a con-

1020 troversy between Wenstrand and the Ingersoll heirs.

Mr. Ingersoll had died and his heirs were unwilling to put in further money to acquire the items on which Wenstrand held options, nor could they be gotten together for the purposes of any plan until after the filing

of the proceedings in this court, during which the Court had occasion to determine the ownership of the items acquired with Ingersoll's money.

During these conversations we recommended proceedings in 77B. The committee was anxious to avail itself of this remedy, as it had done in other cases, but upon the closing of the Cody Trust Company the stock of the corporation had been acquired by the Ingersoll-Wenstrand interests, and it was obviously not their intention at the time to attempt to effect any reorganization but rather to acquire the property themselves, so that at no time were either we or the committee able to induce the stockholders to file a voluntary petition until the proceedings on which the involuntary petitions were predicated had been instituted, and then they gave serious consideration to the matter, with the result that the voluntary petition was filed. Before the filing of the petitions we learned that

1021 Wenstrand had brought suit in the state court to enjoin Fred Rathje's disposing of the junior interests acquired with Ingersoll's money and in escrow with Rathje, on the ground that he had part ownership in those items and Rathje had been enjoined in that proceeding.

When the new involuntary petition was filed we conferred with the parties in interest and with the committee, and, before hearing on that petition, with Walter Gunn, one of the attorneys for the petitioning creditors at Danville. We attended in court here on the original motion for the approval of the voluntary petition, which motion was continued. We attended before Judge Philip Sullivan on motion by the attorneys for the debtor to restrain the petitioning creditors from moving at Danville for the approval of their petition. We appeared at Danville on the motion for the approval of the involuntary petition.

When Judge Lindley transferred that cause to Chicago we attended before Judge Barnes on the motions for the approval of both petitions, and told the court that the committee was very eager to effect an early reorganization through these proceedings. On approval of the petitions we had extended conferences with Wenstrand,

1022 Fred Rathje, Vernon Loucks, attorney for the Ingersoll heirs, and also Attorney William Lodwick, who is associated with him and who also represented people who controlled other junior interests whose assent to any plan was essential. We found of course that the Ingersoll interests were opposed to both bankruptcy petitions, but we conferred with the committee and considered the

presentation by the committee of a plan which would give no participation to junior interests and also one which would. After full consideration of committee and its counsel it was decided to prepare a plan that would give participation, all in the interest of avoiding litigation and consequent delay and expense.

We then drafted the plan and again met with the committee, which formally approved the plan, and the plan was presented to the court by us for the committee without any prior understanding with the junior interests, although we informed the junior interests of the substance of the plan and of the amount of participation. This was done by way of a committee petition prepared by us for leave to intervene and for leave to file the plan and submit the plan to creditors and stockholders, to which petition the said deposit agreement was annexed as an exhibit.

Pursuant to said petition and said deposit agreement we prepared an order, which was entered by the court,

granting leave to the Committee to file the plan and
1023 submit the plan to creditors and stockholders, classifying the claims and fixing the manner and time within which claims and objections thereto might be filed, fixing the time within which objections to the plan might be filed, fixing the time and place of hearing for proposal of the plan, and providing for the requisite notices to be sent to creditors and stockholders in this type of reorganization.

Prior to this we conferred with Mr. Goldberg, one of the attorneys for the debtor, as to the form of the order approving the petitions, and furnished the debtor with the bondholders' list to enable the debtor to comply with the terms of the order. The most concentrated attention was required to accurately obtain the facts necessary to be set forth in the plan. On the entry of the order we cooperated with the committee in procuring the printing of the plan and acceptances thereof, and carefully checked the printer's proof as to these items and cooperated closely with the committee in the preparation of its letter sent to the depositing bondholders. We also conferred with the Trustee in Bankruptcy as to the nature of his duties under the said order.

Prior to the date set for the hearing on the appointment of a permanent trustee, we prepared and drafted an order for the appointment of a permanent trustee, and later attended at the hearing and suggested that the temporary appointment be made permanent. The Court, how-

ever, continued the matter of the permanent appoint-
1024 ment. The deposit agreement required that notice of the adoption of the plan and accompanying resolutions by the committee be lodged with the depositary. We prepared these instruments and saw that they were so executed and so lodged.

We then prepared and filed the claim of the committee on account of deposited bonds and coupons and checked the files from time to time to ascertain what claims had been filed and what, if any, consents to the plan had been filed. Among other things we found that both Wenstrand and the Ingersolls had filed substantially similar claims for the items held by Fred Rathje in escrow. We conferred with Mr. Lodwick, one of the attorneys representing the Ingersoll interests, and attempted to get his parties to assent to the plan. Mr. Lodwich was desirous of having his controversy with Wenstrand adjudicated before assents were filed. We pointed out that that would delay confirmation, and delay was one of the things which we were attempting to avoid in presenting this type of plan.

We stated both to Mr. Lodwick and to Wenstrand that if there was to be any substantial delay we would be compelled to file an amendment to the plan in such way as to eliminate participation to junior interests. As against this, both Wenstrand and Mr. Lodwick's clients finally agreed to put in their assents, and they were filed. Also Mr. Lodwick undertook to have filed the assent of G. R. Curnock, who held $50,000 in principal amount of the second mortgage bonds.

1025 We then conferred with the attorneys for the Reconstruction Finance Corporation, the Harris Trust and Savings Bank, and the Continental Illinois National Bank and Trust Company, and persuaded them to file their assents. The committee procured the assent of substantially all of the depositing bondholders in the manner provided in and by the deposit agreement, and later lodged that assent with the court. The committee, however, did not hold two-thirds of the first mortgage bonds, for there were dissents filed by some of the depositors who later appeared before Judge Barnes in an effort to take down their bonds without payment of any charge.

At about this time J. K. Moore, claiming to hold bonds and certificates of deposit, sent the bondholders postcard notice of a meeting to be held at the Great Northern Hotel called by him. We arranged to have that meeting reported. Mr. Moore was unable to persuade a sufficient number of

holders of CDs to dissent. We also presented this matter to the court. Substantially all of the required assents that were filed were procured through the direct efforts of the committee and its counsel.

Objections to the plan were filed by Edwin Rosenberg, by his attorney, Samuel Micon. Although he is still discussing those objections, it does not appear to be necessary to state them in detail here, for later we procured Mr. Rosenberg's assent to the plan.

1026 I. Gordon and others, the petitioning creditors, through their attorneys, Gilbert Wagner and J. R. Lasky, and David H. Greenberg, filed objections, which briefly summarized were:

(1) that there should be no stock trust;

(2) that the directors of the corporation should be appointed by the court, one from the minority bondholders, one from the committee, and one disinterested director;

(3) that the court should retain continuous jurisdiction during the life of the stock trust;

(4) that the committee should have no control of the property, but that the bondholders, the rightful owners, should control;

(5) that the compensation of the stock trustees is not fixed and specified;

(6) that the plan does not provide for the furnishing of operating statements from time to time and for access by the shareholders to the books and records of the new company.

Objections were also filed by said J. K. Moore. Mr. Moore is not an attorney and it is difficult to summarize here the precise nature of the voluminous objections which he filed. In a general way he attempted to point out that it would be a long time before there was a return to bondholders. He commented on the make-up of the committee, which he said is engineering the reorganization and attempting to get control of the property, and complained of the original underwritings because of which he said the committee members, or some of them, are not proper persons to represent the bondholders. He averred that the bondholders should be permitted to call meetings

1027 and communicate with each other and to dissent from the committee plan without paying "two dollars per hundred par amount of their bonds." He averred that the stock trust agreement should be eliminated and the stock delivered direct to the bondholders; that if the stock trust were to be retained that the trustees be selected from

among the bond owners and that their compensation and method of choosing their successors be specified by the court. Mr. Moore said that he held a $500 bond and also represented the owners of $3500 principal amount of non-deposited bonds and $8000 principal amount of deposited bonds.

The debtor corporation, through Mort D. and Frank Goldberg, filed objections to the plan.

Prior to the hearing on confirmation we prepared and presented to Judge Barnes a petition in respect of the conflicting claims of Wenstrand and the Ingersolls, and we had prepared and issued by the Clerk and served by the Marshal subpoenas and subpoenas duces tecum for witnesses whose testimony might be required at the hearing. We also attended at the hearings had before Referee Chindblom on claims and objections thereto, and we prepared the order later entered allowing those claims which stand allowed.

We then appeared before Judge Barnes on the hearing on confirmation and presented the facts and sub-
1028 stance of the plan, the reasons for its adoption by the committee, and fully presented and argued the matter before the court.

At that hearing attempts were made by the objectors to procure an appraisal and to offer evidence as to the value of the property so as to show that the junior interests should have no participation, and the substance of the objections as filed was made known to the court. The court, however, disposed of the objections holding that there was to be a stock trust and that he would appoint the stock trustees in order to prevent advantage being taken of the bondholders, which he thought surely would be the case if the stock trust provisions were eliminated. The Court having decided to confirm the plan, we prepared and had entered the order of confirmation, which order also made provision for the steps to be taken towards the consummation of the plan and set the time within which petitions for fees might be filed and set the date for that hearing.

We then prepared and submitted to the Court a form of stock trust agreement, and also drafted the articles of incorporation of the new company. I neglected to state that the Court indicated that there would be three trustees instead of five and that they would be selected by the court rather than as provided in the plan, and also that the Court at that time fixed the basis of compensa-

tion of the stock trustees, and these things were incorporated by way of amendment in the order of confirmation.

1029 We did not attend constantly at the hearing on the conflicting claims of Ingersoll and Wenstrand, but we did follow those proceedings sufficiently closely to know how they were concluded and to see that the proper order was entered. Later we prepared the petition for fees and our own as counsel for the Committee.

Recently we checked the draft of the trust agreement and draft of the other instruments necessary to consummate the plan, consisting of by-laws of the new corporation, deed from Trustee in these proceedings to the new corporation, general assignment and assumption between Trustee in these proceedings and new corporation, notice to Trustee under first mortgage to release trust deed and satisfy decree, notice to Trustee under second mortgage to release trust deed, form of release of first mortgage trust deed and satisfaction of foreclosure decree, form of release of second mortgage trust deed, and we also prepared notice, petition and order for the approval of those documents and for the necessary steps to be taken in connection therewith, and attended before Judge Barnes on the presentation of the petition after conferring with the Trustee relative to various points raised by him and by the stock trustees.

In the performance of this service there have been innumerable conferences, correspondence, and many court appearances which I have not attempted to detail here but which has taken a very substantial amount of

1030 time. We expect to carry this matter to its conclusion on behalf of the committee, which will involve the procuring and the execution of the said documents, the obtaining of a letter of opinion, the removal of any objections shown in that letter—always a substantial job in 77B proceedings. It may be necessary to have a loan, and the committee will either have to prepare or assist in preparing the mortgage notes with respect thereto and devote certain services in connection with the closing thereof.

It will also be necessary that we draft, present, and have entered the final decree in these proceedings.

We probably will be compelled to devote between one and two hundred hours in closing the case.

In my opinion reasonable compensation for all our services would be not less than a total of $30,000, with

credit for the payments of $5500, heretofore made us, and so we request a present net allowance to us
1031 of $24,500. There are no requests for disbursements.

Cross-Examination by Mr. Woods.

I do not mean to say that our office conducted all of the lawsuits I have mentioned. Our office didn't file a lawsuit started by Wenstrand v. Pick & Co. We did represent Wenstrand and the Indemnity Insurance Company of North America when suggestions for damages were filed. We came in to represent them at that time.

I don't know whether our office handled the placing of the Granada Indenture on record for $525,000 mortgage. We had something to do with the matter but whether it included the record, I don't know. We organized the Granada Apartments, Inc. but the indenture was made by the old company, Granada Hotel Company.

Our office first had something to do with the Granada in about 1924. We didn't place the indenture on in 1924. We rendered an opinion of title which accompanied or supplemented the Chicago Title opinion.

As near as I can remember it, in the case of all corporate bond issues which were then being made by the Chicago Trust Company they were asking for legal opinions as to the validity and as to the condition of the title and validity of the lien. We prepared whatever forms of Trust Deed were in use by Chicago Trust Company. That is, printed forms. They themselves drew up the trust agreement and filed it and asked us for an
1032 opinion. They had their own title division which included lawyers dealing with recording papers and the disbursing of loans. When the issue was put on in 1928 the Cody Trust and the Chicago Trust cooperated and I would think they used the Chicago Trust form, but I am not sure. The Cody Trust was then a separate institution. I do not know who attended to the release of the old Trust Deed in 1928. Our office possibly did it, I don't know. Whatever we had to do with the matter at that time was handled by Mr. Harding in our office. I didn't handle it personally but that green book I sent you tells the story.

I think it is substantially so that in 1929 we did handle the set up of the Granada Apartments, Inc. and the trans-

fer from the old corporation. The legal work was handled in our office. I never looked at the financial records in the Granada Company to see how much money was charged by Pick & Co. on the furniture account against Granada. All I knew was the amount of their merchandise and the amounts of any of the original down payment which came out of the proceeds of the loan. That loan statement is contained in the Abstract of the Record in the Illinois Supreme Court.

I would not be surprised if you told me those financial records showed charged by Pick & Co. against Granada, the old company and the new company, amounting to $120,000. I never considered the question from the standpoint that $120,000 worth of furniture must have
1033 been distributed among other places than the Granada itself. The only furniture I ever had occasion to consider was the new furniture purchased for $35,000. I didn't handle that transaction except on the assumption of the balance due on the conditional sales contract amounting to about $19,400.

I have a pretty good notion of what became of the $120,000 worth of furniture. The inventory made in 1933 which fixed the value of the furniture at the Granada at $40,000 after having spent $35,000 in replacing it depreciated the value of the stuff in the place at that time, as those appraisers saw it; about forty-three or forty-four thousand in 1933.

I would say that our firm didn't handle the legal business for the Cody Trust Company in connection with the Granada. They had their own counsel. We didn't represent Cody Trust Company. I think we were acting for the Chicago Trust Company as its general counsel. I don't know as there were any other lawyers in the case however. I don't know whether there were other lawyers for Granada who represented the Cody Trust Company. As a matter of fact, I don't think there were any lawyers who handled that transction except ourselves.

I recall payments having been made to the surety company on the receiver's certificate at times other than when we wanted their signature for some change in the record. The only payments that the trustee or the
1034 predecessor in trust ever made—there were only two of them—they made them and had no occasion to get any signature. The signature had nothing to do with it. What you are referring to is the initial payment made by the title company as receiver under Court order. That

was made because the surety company otherwise would not have assented to the entry of that order. I think they came into this arrangement by the receiver's certificate so they would get off the bond over here in the Wenstrand case. I think that is why they loaned their money. They must have had some good reason for lending it.

It is a fact that when we wanted to get the Chicago Title and Trust Company out of the picture and put the Central Republic in they demanded a payment and got it. It is not a fact that when we wanted to get Mr. Albers out and put City National in we paid him. That may be Mr. Hall's impression.

I handled the substitution of the trustee and it was done without any compensation or understanding with the surety company. We had no connection with Mr. Hall as to that phase of it. I think it was quite proper to pay money on that receiver's certificate, considering the language in it, which provides for the reservation to pay taxes and the reserve of $8500 for other purposes. The reserve provision of $8500 was one I put in in drafting that certificate and also, with Hall's practical advice, 1035 as to the needs of the hotel. If we needed money for receiver's fee or for receiver's counsel and if we were to receive some working capital. We were naive enough in 1933 to think we could accomplish a quick reorganization. If so, there would be cash requirements. But when it came to getting the receiver out and the trustee in we simply waived it. The provision was one for our own benefit. We waived it and let the surety company have the money in the reduction of certificates. I think that is what you asked about in view of the $8500 reserve. City National didn't have that reserve on hand when it came time to turn over to this court. It had been used.

I told Mr. Shanfarber that the appeal bond was not an appeal bond, it was only a cost bond.

The order of Judge Wilkerson states that the supersedeas bond is to be in the sum of $40,000 but the cases on the subject state that shall not constitute a supersedeas in the absence of a new order reinstating the injunction. I don't think they would have taken the chance of going to jail by going ahead with the sale if the Judge approved the $40,000 bond. As a matter of fact, the purpose of my argument was to persuade Schanfarber he didn't have much of a claim.

We never like to test law points that can be tested
1036 only by going to jail for not following the court's orders. I don't remember what Schanfarber testified to the other day in reference to not agreeing with me about it, but he wanted to settle the matter. I do not know that Cody Trust Company and others agreed to pay off the Pick claim at the time the new financing was done in 1928. I didn't know that at any time. I know now that Hiram Cody, Wenstrand and Riddle were indemnitors on the surety bonds and I have since come to believe that Cody Trust Company was really running that litigation through Wenstrand.

I know this: In the underwriting of that refunding mortgage, the fact was it was the intention of the Chicago Trust Company to see that it required enough proceeds to take out this Pick title. Later, the Chicago Trust Company waived that loan requirement, first because there wasn't enough money to go around to take care of all obligations. It was purely a refunding loan. Secondly, because Hiram Cody was able to persuade McKieth that the Pick mortgage was invalid and no good, and he had the attorneys who could establish its invalidity. And on giving the bank the letter of indemnity or the Cody Trust, secured by the deposit of $50,000 in seconds, the bank withdraw that particular requirement of the loan. That is what happened. That litigation was not successful.

The agreement was that the Cody Trust was to see that the Bondholders ended up with a good first mortgage on
the property and they pledged $50,000 of seconds to
1037 insure that. I think both the Chicago Trust Company and Cody Trust Company advertised in their circulars this furniture was part of the security sold to bondholders. They had no agreement with Granada but they had removed that lien out of the proceeds of the loan. The Granada had that condition in the loan agreement that they would do it. I know very little about it but what happened is in that green book that Harding prepared and those copies of the papers.

I do not say that there was not an existing cause of action against perhaps the Cody Trust and the Chicago Trust. I put a period there. And then as a practical matter they were both busted. The problem was, notwithstanding that cause of action, the pressing need of keeping this hotel operating and keeping Pick from taking out their equipment which they admittedly owned,

notwithstanding the cause of action, they also owned the furniture, and while Cody and the corporation found some way to put in furniture pending their private litigation with Pick. It got around to me on these equipment items Pick's title had been adjudicated and they could pull them out, and if they pulled them out they would close the hotel and make it necessary to put in new stuff. We had to get that new stuff no matter what was done here.

They operated the Lincoln Park Manor right
1038 across the alley when they didn't own the furniture but that was different. Mr. Gehn of the Lincoln Park Manor put up money on the second mortgage and he also owned the furniture. Mr. Gehn is running the Lincoln Park Manor and expected to work it out. Later when we got a receiver for the Manor, he still owned an equity, and the receiver had to pay so much a month rent for the use of the furniture to Gehn. He had no incentive to take it out; but Picks were experts in the business and they knew where to put on the pressure. Picks were otherwise strangers. They had no interest in the property.

Wenstrand personally owned a portion of the furniture in the property. That was why I wanted his signature. Some of that furniture belonged to Wenstrand himself. The reason that we got rent from Wenstrand and not from Pick and Co. was because Picks were going to pull that stuff unless they got paid. They felt that they could get paid.

These fixture items, the big items, if pulled would just wreck our building. I do not think they were just talking. They knew it was only junk when they took it out and I knew it. I thought it a good thing to take the bondholders money and buy it as long as I didn't pay too much for it. What they took out was movable furniture, like chairs. The place was not filled at that time. There were vacancies.

1039 As to the furniture, we could make changes from one apartment to the other. We did that, but you can't do it with built-in equipment. I do not believe that if they damaged the property by taking out the equipment that they would have to replace it.

I think that under the decree settled by Judge Gentzel that they had the right to take out what was theirs without any obligation to repair or to fix up anything.

There was not $10,000 on hand at the time we got into the Skarda proceedings which could be applied on taxes.

The money that was escrowed was $13,000. That was the revenue from the property over months of operation and it was escrowed so that it would not be grabbed for the payment of taxes. We had $10,000 during the year of the Skarda proceedings in 1935. During the time the old 77B was pending, but not determined by the court, we held that money. Judge Lindley said he had jurisdiction over it. It may be that they were selling the tax warrants at the time they made the transfer from the Chicago Title and Trust Company to Central Republic and it may be that the order provided that the receiver should sell the tax warrants although they had considerable money on hand. I didn't notice that. I knew about the order at the time but I don't remember that phase of it now. I don't remember whether our clients
1040 made any objection to that. I doubt if they did.

The Chicago Title and Trust Company was the receiver from June 30 to April, 1934; there was an order not to interfere with the management of the property as then set up but it is not true that all they did was to keep books for three months and the rest of the time merely receive reports. They followed it closely, as closely as they would in any other case with the exception that they did not put in one of their own men right out in the hotel to operate it.

It is not a fact that $10,000 was accumulated over at the Central Republic and not turned over to the Chicago Title. It was finally escrowed with the City National. It was not accumulated with the Chicago Title. Hall accumulated it and maintained a regular account. He didn't turn it over to the Central Republic. He carried a trust account there. It was not his account. That was with the express consent of the Title Company, however. He had to make this settlement and did not want to spend money on taxes.

In 1933 I filed a cross complaint. I didn't know at that time that the old Granada Hotel Corporation had been dissolved by the Attorney General in 1930. I haven't learned it yet except from your statement about it
1041 in open court. I beg your pardon. I did learn about that through Ed Harding's telegram to the Secretary of State. He wanted to know for the purpose of an answer for that corporation in the first 77B proceeding. Harding wired the Secretary of State to see if they were in good standing. We found out they were done for.

In the decree entered in December, 1936, no one was ordered to pay money. It was an in rem decree.

There might be some recital in there about a deficiency against the Granada Hotel Company, but the court's right to enter a deficiency decree was continued until after the sale was confirmed. We sought to foreclose along with the real estate foreclosure this chattel mortgage.

The pre-existing indebtedness was the value given for the chattel mortgage, I understand. Without the chattel mortgage the bondholders would have had no claim on the personal property as against any third person, either purchasers or judgment creditors or the like.

We were doing exactly the same thing you attempt to do when you get a chattel mortgage with your real estate mortgage at the time you make your original loan. We had gotten the title cleared up in the year 1929 at the time we handled the transfer from the old company to the new company.

1042 It is possible that the title letter that was used in 1936 for the clearing up of those items was the one issued to Rathje and O'Connor. It is not a fact that Wenstrand did most of the work himself. Wenstrand did a very considerable amount of it. We cooperated with him in the doing of it.

Objections were marked off of our original foreclosure minutes and were marked off the original sheet in the title company's office. Our firm cooperated with Rathje and Wenstrand who were working on it. That was done at the time for the purpose of sale and my purpose in doing it was to get clear title for other reasons. I knew what he was trying to do.

I said this was a very involved and complex title from a reorganization standpoint. I think that title of that character can unquestionably be better handled in this court than in the State court. I think I have stated in some detail why we didn't go forward in the State Court.

We kept going forward by every method we could. As a matter of fact, in these real estate matters, I still think we could do it much more expeditiously and more simply just through a conventional foreclosure and Master's deed, if they had ruled the trustee could bid in. In everyone of these things we could have gotten the property for

1043 the bondholders alone. There is no question but what we spent six and a half years, from June, 1930 to December, 1936. Generally speaking, a 77-B form and mode is by far the better procedure.

We are not making any claim of any kind here for Wenstrand. He is n[illegible] a client for whom we are asking a fee. I don't know what his present interest is.

The reason that a number of the original documents pertaining to this Granada matter were not produced by us to the court trustee was that we were just lawyers. We undoubtedly had certain original documents, the trust deeds, the title letters, at least, but as those matters were used and concluded we delivered them to the people who were entitled to them.

Cross-Examination by Mr. Goldberg.

In my claim for fees I included fees I am rendering in the cause now pending before Judge Barnes. With the qualifications I mentioned there. The claim for fees, as I have stated, includes everything we have done so far, and includes an estimate of the time which will be spent in concluding the case. And then beyond that it is predicated on a charge of fifteen dollars per hour, with the time running this way:

First in the aggregate time, according to our records, is 2,025.6, which is divided as follows:

Under the Pick litigation, let us call it that, in the 1044 State Court, there was a total of 650.9 hours of time.

In the services of the trustee—including those in the old bankruptcy proceeding, there was a total of 717.8.

On the Committee side prior to the proceedings here, we had spent on the reorganization side of it, as distinguished from the Court end, 98.5 hours.

In the tax litigation we spent 30 hours.

In the proceedings here, from the time of their inception, breaking them off into the new file, we have at present spent 485.4, plus 53 hours.

That is without figuring any time to complete at all. The actual hours spent are 2,025.6.

What we have done is to figure from our own standpoint the total hours less the credits to get at the amount.

I realize that what I am testifying to here is what we did and what the time was and it remains for the court to figure out the total requests and the total allowances. As to the law question as to whether we should be compensated from the estate or from the property. In the event the court should find the City National Bank has been negligent in one way or another, or has mismanaged

in one way or another, and the Court surcharges its account, I would take it for that purpose the Bankruptcy
1045 Court is sitting as an equity court and that the Judge has the same control over the costs and expenses of the proceeding. For instance, he could even tax them against the other side. It is not like a lawsuit where costs go with the winner.

Beyond that the problems presented to Judge Barnes are severable. There are a whole list of them. There are a number of lawsuits in one bunch.

In my testimony here, either for ourselves or for the Committee, I have not said what cash, out-of-pocket, or other expenses, the trustee has expended thus far in this proceeding. Those are matters which are before Judge Barnes ultimately in the disposition of that controversy.

We want an equitable allowance of fees and expenses.

I don't think the question of whether the estate should pay for defending someone in their own possible wrong can be answered by anybody but Judge Barnes when he gets through with the case.

Thereupon, the Master declared the hearings closed.

1046 CITY NATIONAL'S EXHIBIT NO. 8.

This Exhibit is the Report of Irving E. Brooks, dated September 21, 1937, made to I. L. Hertzman, Property Management Division, City National Bank and Trust Company.

It is an estimate of the construction cost and cost of operation for a power plant and heating system and for water supply system and for refrigerating system with respect to the Arlington.

A summary of the cost of construction and cost of operation was as follows:

1.	Heating system:	
	(a) Cost of construction	$7,722.00
2.	Cost of operation:	3,393.50
3.	Water supply system:	
	(a) Cost of construction	3,245.00
	(b) Cost of operation	986.75
4.	Refrigeration system:	
	(a) Cost of construction	3,500.00
	(b) Cost of operation	1,025.00

1047 CITY NATIONAL BANK & TRUST COMPANY'S EXHIBIT "J."

This Exhibit is the First Mortgage Trust Deed dated September 21, 1928, from the Granada Hotel Corporation to the Chicago Trust Company securing the first mortgage bond issue. In addition to conveying the real estate, the indenture, at page 3, also conveyed

"all tenements, hereditaments, and appurtenances there unto belonging, including all window screens, door screens, curtain fixtures, furnaces, ranges, elevators, ice boxes, gas and electric fixtures, cleaning, power, heating, incinerating, and refrigerating apparatus, facilities and transmission and any and all other fixtures that may be now in any building or may be placed in any building now or hereafter standing on said premises * * *."

Section 3 of Article V of the Indenture provides

"Mortgagor covenants at all times and from time to time, upon the request of Trustee, to cause to be executed, acknowledged, verified and delivered instruments of chattel mortgage and for extension of chattel mortgage upon personal property pertaining to operation of the mortgaged premises and all such assurances of title and additional papers and instruments and to do or cause to be done all acts and things which Trustee may deem necessary or desirable for effectually carrying out the intent hereof or for protecting and strengthening the security for payment of Bonds issued hereunder, or for confirming or assuring the lien of this Trust Deed as a first mortgage on the premises here by conveyed and mortgaged, any appurtenances thereto and the rents, issues and profits thereof."

1048 Article VIII of the Trust Indenture provides:

"Section 1. So long as Mortgagor shall perform all agreements on covenants herein, strictly and without grace, time being of the essence of this provision, Mortgagor shall be suffered and permitted to retain actual possession of and to manage, operate and use the mortgaged premises and to collect, receive, take, use and enjoy the earnings, income, rents, issues and profits from the mortgaged premises, on express condition that Mortgagor shall not anticipate any payments of rentals without express written consent of Trustee and shall make no assignment of the rents, issues and profits of the mortgaged premises except expressly subject to the prior rights of Trustee hereunder as of and from the date hereof.

"Section 2. In any case in which Mortgagor shall violate either condition to the provisions of Section 1 of this Article VIII or shall fail to perform any agreement or covenant hereunder, strictly and without grace, time being of the essence of this provision, Trustee shall, without notice, be entitled to the immediate possession of the mortgaged premises as for condition broken and may, by its agents, with or without entry, take actual or constructive possession of the mortgaged premises, together with all records, books, papers and accounts of Mortgagor relating thereto, or to Mortgagor's operation thereof, and exclude Mortgagor wholly therefrom, and Mortgagor agrees forthwith peaceably to surrender to Trustee and its agents the possession thereof. In any such case the assignment of rents, issues and profits of and from the mortgaged premises hereby presently made or intended to be made shall cease to be suspended and shall become effective as of the date hereof and Mortgagor and all tenants of Mortgagor or other persons occupying the mortgaged premises shall forthwith attorn to Trustee and thereafter pay and account to Trustee for all and every such rents, issues and profits then accrued and unpaid.

"Section 3. Trustee in possession of the mortgaged premises under the provisions of Section 2 hereof is hereby authorized to use, operate, lease and manage the same, by such agents as Trustee may select, and to apply the rents, issues, earnings, income and profits of and from the mortgaged premises, first, to the expense of operating the mortgaged premises, including the reasonable compensation of Trustee and its agents, second, to the maintenance of insurance, the payment of taxes, assessments and other governmental charges, the payment of mechanics' and 1049 materialmen's liens or other liens prior to or co-ordinate with the lien of this Trust Deed, to the putting and/or maintenance of improvements on the mortgaged premises in tenantable and usable condition and/or to such other like or unlike purposes as Trustee may, in its discretion, deem advisable for the preservation of the security afforded hereby, third, to the payment of interest secured hereby then due and unpaid, pro rata in the direct order of maturity thereof, with interest thereon at the rate of seven per cent. (7%) per annum and, last, to the payment of principal amount then due, whether by lapse of time or declaration, pro rata, without respect of differences in maturity thereof, with interest thereon at the rate of

seven per cent. (7%) per annum, but always subject to the provisions of Sections 6, 7 and 8 of Article III hereof.

The expense of administering the mortgaged premises, including the reasonable compensation of Trustee and of its agents and all sums advanced by Trustee under item second above shall constitute additional indebtedness secured by the lien of this Trust Deed on a par with moneys advanced or expended under Article VI hereof.

After payment of all amounts which before or during the period of Trustee's possession shall have become due or payable under any provision hereof or of any Bond or Interest Coupon secured hereby, Trustee shall restore possession of the mortgaged premises to Mortgagor and pay over to Mortgagor the overplus, if any, of moneys which may have come into Trustee's hands while in possession of the mortgaged premises. The right of Trustee so to take possession of the mortgaged premises shall be a continuing right, exercisable as often as occasion therefor may arise. It shall not be exhausted by one or more users thereof nor shall it suspend or modify any right of foreclosure or any other remedy or recourse hereunder or under said Bonds.

"Section 4. Persons dealing with Trustee or with Trustee's agents in relation to the possession or operation of the mortgaged premises or the collection of rents, issues and profits thereof shall not be obliged to look to the application of the proceeds of any such dealing. Such persons shall look solely to Mortgagor or the Trust Estate and neither the Trustee nor any agent of Trustee shall have any personal or individual liability to third persons in respect of any such dealings. The operation of the mortgaged premises by Trustee may be carried on in Mortgagor's name and contracts, including leases, entered into may contain appropriate provisions embodying the substance of the preceding sentence. Trustee, as the expense of Mortgagor or of the Trust Estate, may provide itself and its agents with indemnity insurance against tort liability."

1050 Sections 1 and 3 of Article IX provide:

"Section 1. In any case in which, and when, under the provisions of Article VII above Trustee has the right to declare the principal of all Bonds hereby secured to be due and payable immediately, Trustee, without any action on the part of any Bondholder and without the necessity

of the possession of any of said Bonds or Interest Coupons or of declaring said Bonds due, may (and upon the written request of the holders of not less than 25% in amount of said Bonds then outstanding and upon being satisfactorily indemnified shall) institute such suit or suits, in equity or at law, in any court of competent jurisdiction, to enforce and protect any rights of Trustee or of the Bondholders hereunder as it may deem proper, and especially may institute proceedings to foreclose this Trust Deed in any manner provided by law and to obtain a sale of the mortgaged premises under order of court. Reasonable compensation for the services of Trustee and all costs and reasonably necessary expenses, including all expenses of trial and appeal and preparation for trial or appeal, reasonable attorney's and solicitors' fees, Master's fees, charges for taking, reporting or transcribing any statement of witnesses, deposition or evidence, expense of procuring evidence and cost of procuring abstracts of title, opinions of title and documentary evidence incurred by Trustee in any such suit, action or proceeding shall be so much additional indebtedness secured by this Trust Deed with a lien prior to that of holders of Bonds and Interest Coupons and of persons entitled to protection under Article VI hereof.

"Section 3. The proceeds of any foreclosure sale of the mortgaged premises shall be applied in the following order: First: To the payment of all costs and expenses provided in Section 1 of this Article and of all costs of advertisement, sale and conveyance; Second: To the payment of all expenses of the Trust hereby created, including all moneys advanced by Trustee or the holders of Bonds pursuant to the provisions of Article VI hereof and all sums secured hereby as in Article VIII hereof provided; Third: To the pro rata payment of the aggregate of the amount due on or for (a) Interest Coupons on said Bonds accrued and unpaid, plus (b) interest on overdue Interest Coupons at the rate of seven per cent. (7%) per annum and interest on principal of Bonds overdue by lapse of time and not represented by Interest Coupons, at the rate of seven per cent. (7%) per annum, plus (c) the principal of the Bonds secured hereby remaining unpaid; always without preference of principal over interest or interest over principal or of one installment of interest over any other, but subject to the provisions of Sections 6, 7 and 8 of Article III hereof; and Fourth: To the payment of the surplus, if any, to Mortgagor or as the court may direct."

1051 Section 2 of Article XI of the Indenture provides:

"Section 2. Trustee shall not be answerable for the default or misconduct of any attorney, agent, agency or employee appointd or employed by it, if selected with reasonable care, nor shall Trustee be answerable for any error of judgment or for any act done or step taken or omitted by it in good faith nor for any mistake of fact or of law based on information or advice deemed authentic and correct. The officers, representatives, employees and attorneys of Trustee shall have the same immunities from liability as Trustee and each shall be liable only for his own intentional and wilful wrong-doing."

Article XII of the Trust Indenture provides:

"Section 1. In case Chicago Trust Company shall become merged or consolidated with any corporation or corporations, or in case its trust business shall be transferred to any other corporation, this trust, with all its rights, titles, powers, discretions and immunities, shall devolve upon the consolidated or other corporation.

"Section 2. In case of the resignation of Trustee or its failure to act after proper request and due indemnity, or in case Trustee for any reason shall be unable or unwilling to act as Trustee, Chicago Title and Trust Company is hereby constituted and appointed Trustee hereof, with the same rights, titles, powers, discretions and immunities as if originally appointed Trustee hereunder."

1052 CITY NATIONAL'S EXHIBIT "K."

City National's Exhibit "K" is a chattel mortgage in part as follows:

"Know all men by these presents that the undersigned, Cody Trust Company, a corporation, Granada Apartments, Inc. a corporation, La Salle Furniture and Supply Company, a corporation, and Elof Wenstrand of the City of Chicago, County of Cook and State of Illinois, to secure payment of the sum of Seventy-Five Thousand Dollars ($75,000.00) evidenced by the note of Granada Apartments, Inc. in the like principal sum dated August 23, 1933, payable to the bearer on the 2nd day of September, 1933, as security for the payment of said indebtedness and the fulfillment of the provisions of said note, for value received do hereby Grant, Sell, Convey and Confirm unto Central Republic Trust Company, a corporation of Illinois, with its offices at Chicago, Illinois, as Trustee under trust deed

recorded in the Recorder's Office of Cook County, Illinois, as Document 10161996, and to its successors and assigns, the following goods and chattels (located and to be located on the premises described and known as Lots Thirty-Two (32) and Thirty-three (33) of Out Lot "C" in Wrightwood, a Subdivision of the South West quarter of Section 28, Township 40 North, Range 14, East of the 3rd P.M., in Cook County, Illinois) and any and all other personal property in and about the improvement now located on said premises, subject to conditional sales contract dated August 12, 1930, originally in the sum of Thirty-Five Thousand Dollars ($35,000.00) made by Granada Apartments, Inc. to LaSalle Furniture and Supply Company and by LaSalle Furniture and Supply Company assigned to Cody Trust Company, and by Cody Trust Company assigned to Continental Illinois National Bank and Trust Company of Chicago."

(Here follows a specific room-by-room description of the goods and chattels conveyed and the usual covenants of title, chattel mortgage being executed by all of the parties named in the foregoing part thereof and being dated the 23rd day of August, 1933.)

1053 CITY NATIONAL'S EXHIBIT "L".

City National's Exhibit "L" is a chattel mortgage note for Seventy-Five Thousand Dollars ($75,000) secured by a chattel mortgage, City National's Exhibit "K", dated August 23, 1933 and is payable to bearer, the Central Republic Trust Company and is signed "Granada Apartments, Inc. by R. W. Walters, Pres."

1054 CITY NATIONAL'S EXHIBIT "M".

City National's Exhibit "M" is an asignment from the Central Republic Trust Company and William L. O'Connell, as receiver of Central Republic Trust Company, to City National Bank and Trust Company of Chicago of all the right, title and interest to and under the chattel mortgage (City National's Exhibit "K", supra) and to the goods and chattels described in said chattel mortgage and their interest in and to the indebtedness secured by said chattel mortgage evidenced by promissory note (City National's Exhibit "L", supra). The assignment is dated January 3, 1935.

1055 CITY NATIONAL'S EXHIBIT "N".

City National's Exhibit "N" is the Decree of Sale entered in the proceedings for the foreclosure of the first mortgage (City National's Exhibit "J") in the Superior Court of Cook County on December 18, 1936.

The Decree recites that the cause comes on to be heard by the cross-bill taken as confessed by, among others, the Granada Hotel Corporation and Granada Apartments, Inc. The Decree contains among others, the following provisions:

"The Court, being fully advised in the premises, doth find:

1. That it has jurisdiction of the subject matter in this cause and of all the parties hereto."

On Page 8 of the Decree

"that on, to-wit, January 3, 1935, the cross-complainant, City National Bank and Trust Company of Chicago, was appointed Successor Trustee under said trust deed and that thereupon it accepted said appointment and has been continuously since then, and is now, acting as the duly appointed and qualified Successor Trustee under said trust deed and that the written acceptance of said City National Bank and Trust Company of Chicago, a corporation, of its appointment as said Successor Trustee under said trust deed has heretofore been filed herein and that upon its appointment as said Successor Trustee said City National Bank and Trust Company of Chicago thereupon became and is now vested with all of the rights, titles, powers, duties, immunities and discretions of the original Trustee under said trust deed and of said Central Republic Trust Company (formerly known as the Central Republic Bank and Trust Company) as Successor Trustee under said trust deed."

1056 Paragraph 12 of said Decree, at page 15 thereof, provides:

"12. That the original cross-complainant herein, Central Republic Trust Company, as Trustee, and the present cross-complainant herein, City National Bank and Trust Company of Chicago, a corporation, as Successor Trustee, necessarily required the services of solicitors herein to institute and to conduct these proceedings and did engage such solicitors; that said solicitors have rendered various services herein and hereafter shall be compelled to render further services herein; that the fair, usual, reasonable and customary fees for the services rendered and to be ren-

dered herein by said solicitors are the sum of $13,500.00; that said solicitors have agreed to accept the sum of $9,000.00 in full of their fees for services rendered herein; that $8,250.00 represents the fees of the cross-complainant's solicitors for the services rendered to date and the balance of said sum, $750.00, represents the fees for services to be hereafter rendered herein by said solicitors. The Court hereby allows to the present cross-complainant herein the sum of $9,000.00 for said solicitors' fees as an additional lien upon the premises involved herein under the terms of said trust deed prior and superior to the lien on the unpaid and outstanding bonds and interest coupons, together with accrued interest thereon."

Paragraphs 15 and 16 of the Decree provide:

"15. The Court states the account of the said cross-complainant, City National Bank and Trust Company of Chicago, a corporation, as Successor Trustee as aforesaid (for its own use and benefit), against the said defendant and cross-defendant, Granada Hotel Corporation, a corporation, as follows:

Fees of cross-complainant for services as Successor Trustee	$ 2,560.00
Cross-complainant's solicitors' fees	9,000.00
Court reporter's and stenographer's fees	39.90
Amount to be paid for additional minutes of title	100.00
	$11,699.90

1057 "16. That the said cross-complainant City National Bank and Trust Company of Chicago, a corporation, as Successor Trustee as aforesaid (for its own use and benefit), has a first, prior and paramount lien upon the premises and real estate hereinafter described and the rents, issues and profits thereof and the personal property hereinafter described for the sum of $11,699.90 and its unpaid costs of suit, if any, which lien is prior and superior to the right, title and interest of each and all of the defendants and cross-defendants herein and any and all persons claiming by, through or under them, or any of them."

Paragraph 17 of the Decree finds due the Trustee for the benefit of the holders of unsubordinated bonds and coupons $606,741.14.

Paragraph 18 provides:

"18. That the said cross-complainant City National Bank and Trust Company of Chicago, a corporation, as

Successor Trustee as aforesaid (for the use and benefit of the owners and holders of the unsubordinated bonds and interest coupons secured by said trust deed recorded as Document No. 10161996), has a first, prior and paramount lien upon the premises and real estate hereinafter described, and the rents, issues and profits thereof and the personal property hereinafter described, for the sum of $606,741.14, together with interest thereon at the rate of 5% per annum from March 27, 1935, the date of said Master's report, which lien is prior and superior to the right, title and interest of each and all of the defendants and cross-defendants herein and any and all persons claiming by, through or under them, or any of them, but which lien is subject to the said lien of the said cross-complainant hereinabove described for $11,699.90 and unpaid costs."

Paragraph 21 of the Decree provides:

"21. That there is now due to said cross-complainant, City National Bank and Trust Company of Chicago, a corporation, as Successor Trustee under the trust deed recorded as Document No. 10161996 (for the use and benefit of the following respective parties), the following sums:

1. For its own use and benefit the sum of $11,699.90 and its unpaid costs of suit, if any;

1058 2. For the use and benefit of the owners and holders of the unsubordinated bonds and interest coupons secured by the said trust deed recorded as Document No. 10161996 the sum of $606,741.14, together with interest thereon at the rate of 5% per annum from March 27, 1935, the date of said Master's report; and

3. For the use and benefit of the owners and holders of the subordinated bonds and interest coupons secured by the said trust deed recorded as Document No. 10161996 the sum of $31,173.17, together with interest thereon at the rate of 5% per annum from March 27, 1935, the date of said Master's report;

which sums are liens upon the said premises and real estate hereinafter described, and the rents, issues and profits thereof and the personal property hereinafter described, in the above mentioned order of preference and priority and which liens are prior and superior to the right, title and interest of each and all of the defendants and cross-defendants herein and any and all persons claiming by, through or under them or any of them and for the payment of which the said defendant and cross-defendant, Granada Hotel Corporation, is personally liable."

Paragraphs 24 and 25 of the Decree provide:

"24. That by virtue of an order entered herein on or about the 11th day of August, A. D. 1933 the Chicago Title and Trust Company, then the Receiver of the premises hereinafter described, issued its Receiver's certificate of indebtedness dated August 23, 1933 for the sum of $11,500.00, payable to the order of the Indemnity Insurance Company of North America, a corporation, on or before thirty-six months after date, with interest at the rate of 5% per annum, payable at maturity. Said order provided that said certificate was to be and constitute a valid and subsisting first and prior lien upon the premises and real estate hereinafter described and the proceeds of any sale thereof and the rents, issues and profits therefrom and said personal property hereinafter described, prior and superior to the right, title, interest and lien of each and all the parties to this proceeding.

1059 "25. The Court finds from evidence adduced in open court that on April 27, 1934, May 24, 1934 and September 22, 1936, the sums of $1,482.26, $3,006.73 and $2,500.00, respectively, were paid on account of said Receiver's certificate, leaving a balance of $4,511.01 now due thereon, together with interest on $11,500.00 at the rate of 5% per annum from August 23, 1933 to April 27, 1934; interest on $10,017.74 at the rate of 5% per annum from April 27, 1934 to May 24, 1934; interest on $7,011.01 at the rate of 5% per annum from May 24, 1934 to September 22, 1936; and interest on $4,511.01 at the rate of 5% per annum from September 22, 1936. That said Receiver's certificate is now held and owned by the Indemnity Insurance Company of North America."

Page 23 and 23½ of the Decree in part provides:

"The court finds from evidence adduced in open court that heretofore on or about January 3, 1935, the said cross-complainants, City National Bank and Trust Company of Chicago, a corporation, as Successor Trustee, took possession of the premises involved herein under the terms of the trust deed recorded as Document No. 10161996. That as of September 30, 1936 the said cross-complainant represents it has on hand a balance of $1,608.56, which sum should be applied on the indebtedness found due in this decree in the above mentioned order of preference and priority.

It Is, Therefore, Ordered, Adjudged and Decreed that said cross-complaint, City National Bank and Trust Company of Chicago, a corporation, as Successor Trustee, be,

and it is hereby, directed to apply said sum of $1,608.56 on account of its first lien in the sum of $11,699.90; and

The Court finds that, after applying said sum of $1,608.56 as aforesaid on account of said sum of $11,699.90, there is still due and unpaid to the said cross-complainant City National Bank and Trust Company of Chicago, a corporation, as Successor Trustee (for its own use and benefit), the sum of $10,091.34."

Page 24, etc. of the Decree directs that the Master in Chancery sell the property to satisfy the amounts found due the Trustee and makes the usual provision about redemption, failure of redemption and issuance of Master's Deed and also directs the sale of the chattel mortgage held as additional security under the terms of the chattel mortgage (City National's Exhibit "K") subject, however, to the conditional sales contract dated April 12, 1930 originally in the sum of Three Thousand Five Hundred
1060 Dollars ($3,500.00) made by Granada Apartments, Inc. to LaSalle Furniture and Supply Company and by the latter company assigned to Cody Trust Company and by Cody Trust Company assigned to the Continental Illinois National Bank and Trust Company of Chicago.

At page 36 the Decree provides that out of the proceeds of sale, the Master or Special Commissioner is to pay to Insurance Indemnity Company of North America $4,511.01, the balance to be paid on the said receiver's certificate of indebtedness, dated August 23, 1933, with interest thereon; that he is then to pay City National Bank and Trust Company of Chicago, as Successor Trustee for its own use and benefit or its solicitors of record the sum of $10,091.34 and its unpaid costs of suit and is to distribute the balance as in said Decree provided.

1061 CITY NATIONAL'S EXHIBIT "S".

City National's Exhibit "S" is an order entered on November 30, 1935, in the Superior Court of Cook County, Illinois, in the foreclosure proceeding taxing the Master's fees as costs in the sum of $2,552.80.

1062 CITY NATIONAL'S EXHIBIT "Q".

City National's Exhibit "Q" is an order entered on the motion of Defrees, Buckingham, Jones & Hoffman, as attorneys, for Central Republic Trust Company, as Trustee, on August 23, 1933 in the Superior Court of Cook County, Illinois, in the case of *William A. Thuma* v. *Granada Hotel Corporation, et al.,* (foreclosure suit), providing that

"It Is Ordered that the order heretofore entered herein on the 11th day of August, 1933, authorizing the receiver to pay certain funds to International and Industrial Securities Corporation be, and it is hereby, amended by adding the following paragraph:

'It Is Further Ordered that Chicago Title and Trust Company, Receiver herein, be and it is hereby authorized to make the said payment to Ringer, Wilhartz, & Hirsch, as solicitors for International and Industrial Securities Corporation.'

It Is Further Ordered that the order heretofore entered herein on the 11th day of August, 1933, as aforesaid, be and it is hereby, further amended by striking from the receiver's certificate in said order set forth the following:

'(and, in the case of said personal property, if any, subject only to the lien of chattel mortgage recorded in the Recorder's Office of Cook County, Illinois as Document No. .....),'

and by inserting in lieu thereof the following:

'(and, in the case of said personal property, if any, subject only to conditional sales contract dated August 12, 1930 originally in the sum of $35,000 made by Granada
1063 Apartments, Inc., to LaSalle Furniture & Supply Company and by LaSalle Furniture & Supply Company assigned to Cody Trust Company, and by Cody Trust Company assigned to Continental Illinois National Bank and Trust Company of Chicago).'"

1064 COURT TRUSTEE'S EXHIBIT "V".

This Exhibit is a circular put out by Chicago Trust Company in 1928, a part of which is as follows:

"Valuation: The Granada has been appraised by Chicago Trust Company and Cody Trust Company as follows:

Land	$120,000
Building	680,000
Total	$800,000

In addition, and furnishing added security, the furniture and equipment in the Granada are valued at $88,000."

92 COURT TRUSTEE'S EXHIBIT B.

City National Bank and Trust Company—Trustee
The Granada Apartment Hotel
Summary Analysis of Cash Accounts
From January 4, 1935 to May 17, 1937.

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94

CITY NATIONAL BANK AND TRUST COMPANY—TRUSTEE

The Granada Apartment Hotel

Summary Analysis of Cash Accounts

From January 4, 1935 to May 17, 1937

	January 4 to December 31, 1935		Year 1936			January 1 to May 17, 1937			Total January 4, 1935 to May 17, 1937	
	Trustee in Possession Account	General Account	Trustee in Possession Account	General Account	Foreclosure Decree Distribution Fund	Trustee in Possession Account	General Account	Foreclosure Decree Distribution Fund	Trustee in Possession Account	General Account
Receipts										
Rentals and incidentals—net		$66,476.44		$73,133.80			$29,803.60			$169,413.84
Hotels—Heat, refrigeration, water, etc		14,185.69		14,192.07			5,522.85			33,900.61
Counter sales		74.03		52.88			19.51			146.42
Topics accounts receivable		606.72		577.92			202.02			1,386.66
Telephone		68.30		74.60			18.59			161.49
Exchange		9.07		2.96			.20			12.23
Former guests—Accounts and notes receivable		234.52		56.93			250.81			542.26
Returned insurance premiums	$ 18.37	9.70		10.88		$ 83.10	72.27		$ 101.47	92.85
Miscellaneous		124.23		370.51			139.93			634.67
Accounts receivable—Miscellaneous		108.50		131.75			51.01			291.26
	18.37	81,897.20	—	88,604.30	—	83.10	36,080.79	—	101.47	206,582.29
Central Republic Trust Company—former trustee—Balance January 4, 1935 transferred	9,995.46								9,995.46	
Transfers:										
From General Account	11,687.30		15,022.50			5,224.93			31,934.73	
From Trustee in Possession Account					1,608.56					
Total Receipts—Forward	21,701.13	81,897.20	15,022.50	83,604.30	1,608.56	5,308.03	36,080.79	—	42,031.66	206,582.29
Disbursements:										
Payroll:										
Rooms, general and administrative		16,206.66		15,837.34			6,187.03			38,231.03
Heat and refrigeration		2,460.00		2,460.00			943.18			5,863.18
Painters, repairs and maintenance		3,480.00		3,250.00			1,541.01			8,271.01
Topics editor and hostess		300.00		300.00			100.00			700.00
Organist				160.00			80.00			240.00
Electricity		7,279.70		7,400.91			2,975.30			17,655.91
Fuel oil—Heat and refrigeration		6,488.04		7,529.95			6,158.70			20,171.69
Telephone and telegraph		2,856.90		3,190.68			1,500.40			7,547.98
Insurance	122.03	1,301.72		1,130.64			629.54		122.03	3,061.90
Rubbish removal		120.00		120.00			50.00			290.00
Gas		695.65		728.95			345.68			1,770.28
House laundry		2,877.91		2,873.35			1,338.40			7,089.66
Water		1,924.68		1,941.22			996.54			4,862.44
Guests' vault		977.86		994.34			349.70			2,321.90
Newspapers		408.64		412.50			166.36			987.50
Auditing	17.50	780.00		845.00			260.00		17.50	1,685.00
Management fee—Trustee		2,900.32		2,935.17			1,205.64			7,041.13
Management fee—Edward Hall, Agent		645.16		600.00			227.41			1,472.57
Miscellaneous expense—Edward Hall, Agent				100.00						100.00
Stoves—Cribben and Sexton Co				1,077.58			578.31			1,655.89
Carpets—Peter De Sitter & Bro		1,822.90		3,404.41			588.77			5,816.08
Forward	139.53	53,521.14	—	57,292.04	—	—	26,221.97	—	139.53	137,035.15

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95

CITY NATIONAL BANK AND TRUST COMPANY—TRUSTEE

The Granada Apartment Hotel

Summary Analysis of Cash Accounts

(Concluded)

	January 4 to December 31, 1935		Year 1936			January 1 to May 17, 1937			Total January 4, 1935 to May 17, 1937	
	Trustee in Possession Account	General Account	Trustee in Possession Account	General Account	Foreclosure Decree Distribution Fund	Trustee in Possession Account	General Account	Foreclosure Decree Distribution Fund	Trustee in Possession Account	General Account
Total Receipts—Forward	$21,701.13	$81,897.20	$15,022.50	$88,604.30	$ 1,608.56	$ 5,308.03	$36,080.79	$ —	$42,03 66	$206,582.29
Disbursements, Concluded Forward	139.53	53,521.14	—	57,292.04	—	—	26,221.97	—	139.53	137,035.15
Furniture—Chicago Seating Co.		165.10		740.53			294.40			1,200.03
Federal social security taxes:										
Old age benefit							171.20			171.20
Unemployment							237.10			237.10
Other operating disbursements			9,491.27		9,937.19		3,481.81			22,910.27
Miscellaneous expense	3.40								3.40	
Note payable—Continental Illinois National Bank and Trust Co.—Furniture contract		4,800.00		4,800.00			1,600.00			11,200.00
Interest on note payable—furniture contract		720.00		432.00			80.00			1,232.00
Payments on receiver's certificate			2,500.00			511.01			3,011.01	
Real estate taxes and penalties—1929	7,565.06		220.73						7,785.79	
" —1930	1,396.85		8,358.42						9,755.27	
" —1931			5,416.44			2,300.00			7,716.44	
" —1932						2,001.00			2,001.00	
" —1933	1,710.91								1,710.91	
Personal property tax—1934	159.18								159.18	
Tax reduction fee—E. and M. Fuhrer			403.57			269.91			673.48	
Legal fees—Defrees, Buckingham, Jones and Hoffman	50.00		3,857.79						3,907.79	
Igoe and Flaherty	150.00								150.00	
R. C. O'Connell, Master in Chancery, foreclosure fee			2,552.80						2,552.80	
D. H. Reed, Clerk of U. S. District Court				167.50						167.50
Title examination—Chicago Title and Trust Co.								100.80		
Transfers:										
To Trustee in Possession Account		11,687.30		15,022.50			5,524.93			32,234.73
To foreclosure decree distribution fund—October 29, 1936			1,608.56						1,608.56	
To Federal unemployment insurance fund							182.66			182.66
To Weightstill Woods, Federal Trustee, May 17, 1937						773.40			773.40	
Total Disbursements	11,174.93	80,384.81	24,918.31	88,391.76	—	5,855.32	37,794.07	100.80	41,948.56	206,570.65
Excess Receipts over Disbursements	10,526.20	1,512.39	9,895.81*	212.54	1,608.56	547.29*	1,713.28*	100.80*	83.10	11.65
Balance at beginning of period	—	—	10,526.20	1,512.39	—	630.39	1,724.93	1,608.56	—	—
Balance at end of period	$10,526.20	$ 1,512.39	$ 630.39	$ 1,724.93	$ 1,608.56	$ 83.10	$ 11.65	$ 1,507.76	$ 83.10	$ 11.65
The following contra receipts and disbursements are excluded from above receipts and disbursements:										
U. S. Treasury bills	$10,000.00									
Currency checks		$ 5,762.49		$ 2,985.43			$ 973.35			
Returned checks redeposited		392.27		814.00			3.00			

*Indicates red figures.

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182 COURT TRUSTEE'S EXHIBIT J.

And on, to wit, the 22nd day of January, 1935 came the Petitioner by its attorneys and filed in the Clerk's office of said Court a certain Intervening Petition in words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2613D) * *

INTERVENING PETITION OF CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE.

Now comes City National Bank and Trust Company of Chicago, and leave of court being first had and obtained and for the purpose of its special and limited appearance heretofore entered herein, represents:

1. That on the 29th day of April, 1929, Granada Hotel Corporation was the owner of the real estate and premises described as

Lots 32 and 33 of Out Lot "C" in Wrightwood, a Subdivision of the Southwest Quarter of Section 28, Township 49 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois,

among other things subject to a first mortgage bond issue of $525,000 secured by trust deed to Chicago Trust Company, as Trustee, recorded in the Recorder's Office of Cook County, Illinois, October 1, 1928, as Document 10161996; that the apartments in the improvement on said premises were furnished and that the said improvement was operated as an apartment hotel, but that the interest of the said corporation in and to the said furniture and equipment was subject to the lien of a chattel mortgage held by Albert Pick & Company.

2. That on April 29, 1929, Granada Hotel Corporation, by its warranty deed, conveyed the said real estate and
183 premises to Granada Apartments, Inc., which said deed was duly delivered and recorded in the Recorder's Office of Cook County, Illinois, at or about the date thereof, and that on April 29, 1929, Granada Hotel Corporation assigned and transferred to Granada Apartments, Inc. all of its right, title and interest in and to all prop-

erty of every kind whatsoever held or owned by it or in which it might have any right, title, interest or claim.

3. That on April 29, 1929, as aforesaid, Granada Hotel Corporation disposed of all of its assets and property and that thereafter on the 7th day of May, 1930, it was dissolved by decree of the Superior Court of Cook County, Illinois, entered in cause there pending as No. 50985, at the instance of the People of the State of Illinois in an action brought through the Attorney General for the State of Illinois, and that said decree has never been reversed, vacated or modified in any way.

4. That on the 10th day of June, 1930, proceedings for the partial foreclosure of a mortgage upon the above real estate and premises were filed in the Superior Court of Cook County, Illinois, in cause No. 519151, and Chicago Title and Trust Company was appointed Receiver in said proceedings; that thereafter Central Republic Trust Company, as successor by consolidation to said Chicago Trust Company under said Document 10161996, filed its cross-bill of complaint for the foreclosure of the first mortgage, which proceedings are still pending and undetermined.

5. That on June 24, 1930, an order was entered in said cause No. 519151 on the petition of Albert Pick & Company, directing Chicago Title and Trust Company, Receiver, to surrender to Albert Pick & Company any and all personal property belonging to Granada Hotel Corporation, and that the said Receiver did surrender said personal property.

6. That before and after the entry of the order requiring the surrender of said personal property, Granada Apartments, Inc. purchased sufficient personal property fully to refurnish said apartment hotel and that Granada Apartments, Inc. and others, by chattel mortgage, transferred to Central Republic Trust Company all their right, title and interest in the new personal property as further security for the payment of indebtedness of Granada Apartments, Inc. and as further security for the payment of the bonds secured by said Document 10161996.

7. That thereupon Central Republic Trust Company filed its supplemental cross-bill in the said state court
184 proceedings for the foreclosure not only of said Document 10161996, but also of its said chattel mortgage aforesaid, and that said proceedings are still pending and undetermined,

8. That on the 16th day of March, 1934, by order of the Superior Court of Cook County, Chicago Title and Trust

Company, as such Receiver, was directed to and did surrender possession of said real estate and personal property to Central Republic Trust Company, as Trustee, which took possession thereof and held it until January 3, 1935 under the terms of its trust deed and as mortgagee in possession after condition broken.

9. That on January 3, 1935, by order of said Superior Court of Cook County entered in the said proceeding, City National Bank and Trust Company of Chicago, your petitioner herein, was appointed Successor Trustee, and as such Successor Trustee on January 3, 1935 took possession from Central Republic Trust Company, and has since been, and is now, in possession of said property.

10. That on April 24, 1934, Chicago Title and Trust Company presented its final report and account in the said state court proceedings, which report and account were approved and the said Receiver was discharged by order entered that day in said proceedings.

11. That by reason of the premises, your petitioner avers that the debtor corporation has no right, title or interest in and to said real estate or personal property, and further avers that there is in existence no corporation known as Granada Hotel Corporation.

12. That on the 18th day of January, 1935, the petitioning creditors herein applied for an order appointing a Temporary Trustee to take possession of the property of the debtor corporation described in the original petition herein and for an injunction restraining the further prosecution of said state court cause No. 519151 and for an order upon the question of the permanent possession of the Trustee, or in the alternative, restoring the debtor to possession.

13. Your petitioner asserts a claim adverse to that of the debtor corporation, the petitioning creditors and any Trustee which may be appointed herein, and avers that it has not consented to an adjudication of the title to said real estate or said personal property or to the possession thereof by this court in a summary proceeding; that a controversy exists with reference to said real estate and personal property and that this court is without jurisdic-
185 tion or right in law to summarily order any Trustee herein to take possession of said real estate or said personal property, and without jurisdiction to restrain the prosecution of said proceedings cause No. 519151 which relate to property in which the debtor corporation has no right, title, interest or claim.

14. That the taking of possession of said real estate or personal property or any jurisdiction thereof by this court in view of the facts herein shown would be a violation of the Fifth Amendment to the Constitution of the United States of America.

Wherefore, your petitioner asserts an adverse claim and controversy in reference to said real estate and personal property held adversely as aforesaid and that the motion of the petitioning creditors herein for an order appointing a Temporary Trustee to take possession of the said property, for an injunction restraining the prosecution of said cause No. 519151 and for an order setting the date for hearing upon the question of the permanent appointment of the Trustee, or in the alternative, restoring the debtor to possession, should be denied.

City National Bank and Trust Company
of Chicago,
By Don Kenneth Jones,
Defrees, Buckingham, Jones &
Hoffman,
Its Attorneys.

Don Kenneth Jones,
Defrees, Buckingham, Jones & Hoffman,
Attorneys for said Intervening
Petitioner.

State of Illinois }
County of Cook } ss.

Vincent O'Brien, being duly sworn, on oath deposes and says that he is one of the attorneys for and the duly authorized agent in this behalf of City National Bank and Trust of Chicago, as Trustee, petitioner herein; that he has read the above and foregoing petition on its behalf subscribed, know the contents thereof, and that the same is true.

Vincent O'Brien.

Subscribed and sworn to before me, this 22nd day of January, 1935.

Kirsten Sorensen,
Notary Public.

(Seal)

186 And on, to wit, the 22nd, day of January, 1935, came C. S. Tuttle, et al, by their attorneys and filed in the Clerk's office of said Court a certain Answer in words and figures following, to wit:

EXHIBIT 3.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2613D) * *

ANSWER OF C. S. TUTTLE, ET AL., TO THE ORIGINAL PETITION OF SAM HARRIS, ET AL., FILED HEREIN.

Now come C. S. Tuttle, Albert J. Peterson, Lewis W. Riddle, W. G. Sturm, and E. A. Kilmer, as members of a Committee constituted under the terms of the deposit agreement dated April 28, 1933 relating to first mortgage bonds of Granada Hotel Corporation, and for answer to the original petition filed herein say:

1. That there have been deposited with them under the terms of said deposit agreement first mortgage bonds of Granada Hotel Corporation in excess of $300,000. principal amount, and that under and by virtue of the terms and provisions of the said agreement full and complete title, legal and equitable, in and to the said bonds has been and is vested in these respondents, by reason of which they are creditors of Granada Hotel Corporation having provable claims which they aver in the aggregate are in excess of the value of the securities held by them to the sum of One Thousand Dollars ($1,000) or over.

2. They are not informed as to the averments set forth in paragraphs numbered 1 of the said petition, but they admit the averments contained in paragraph 2 thereof.

3. They deny that the said debtor is within the jurisdiction of the court under the provisions of the Bankruptcy Act, but admit that there is pending in the Superior Court of Cook County the said cause there numbered 519151 described in paragraph 8 of the said petition; they admit that during the pendency of said proceeding Chicago Title and Trust Company was named Receiver therein, but aver that at the time of the filing of the petition herein Chicago Title and Trust Company was not acting as Receiver, and
187 further aver that on the 16th day of March, 1934 an order was entered in said Cause No. 519151 directing

said Chicago Title and Trust Company, as Receiver, forthwith to surrender to Central Republic Trust Company, as Trustee under trust deed recorded in the Recorder's Office of Cook County, Illinois as Document 10161996, all property in its possession as such receiver, and further aver that the said trust deed Document 10161996 is the trust deed securing the issue of first mortgage bonds hereinabove mentioned. They further aver that the said Receiver did, pursuant to said order, so surrender possession to said Central Republic Trust Company, as Trustee, and that said Trustee held possession as mortgagee in possession after condition broken until the 3rd day of January, 1935, on which date City National Bank and Trust Company of Chicago was appointed Successor Trustee to Central Republic Trust Company by order of said Superior Court of Cook County, Illinois entered in said Cause 519151, and that on the 3rd day of January, 1935 possession of the property involved in the said proceeding numbered 519151 was surrendered to, and is now held by, City National Bank and Trust Company of Chicago as such Successor Trustee and as mortgagee in possession after condition broken.

4. Your respondents further aver that on the 24th day of April, 1934 the final account and report of Chicago Title and Trust Company as such Receiver was filed in said Cause 519151 and approved by the court therein, and that the said Receiver was by order of court entered on the date last aforesaid duly discharged.

Wherefore, and from the facts appearing in the original petition herein, these respondents say that the petitioners are without right to file their said petition, that the court is without jurisdiction to entertain it, that it should not be approved as properly filed, and should be dismissed.

C. S. Tuttle,
Albert J. Peterson,
Lewis W. Riddle,
W. G. Sturm,
E. A. Kilmer,
By Don Kenneth Jones,
Defrees, Buckingham, Jones & Hoffman,
Their Attorneys.

Don Kenneth Jones,
Defrees, Buckingham, Jones & Hoffman,
Attorneys for said Respondents.

225 And afterwards, to wit, on the 26th day of February, 1935, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitle cause, before the Honorable Walter C. Lindley, District Judge, appears the following entry, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2613D) * *

Parties holding bonds of the Granada Hotel Corporation, secured by trust deed, filed herein on December 31, 1934 their creditors' petition under Section 77-B of the Bankruptcy Act, seeking reorganization of the property, which consists of an apartment building, of some 200 apartments. The defendant corporation made no response to service of subpoena and has been defaulted. Evidence has been submitted upon the question of good faith, from which it appears that the petitioners are bona fide bondholders, who received their securities largely in consideration of services rendered in the construction of the building.

226 The City National Bank and Trust Company, as trustee, on January 22, 1935 filed its special and limited appearance, urging that the Court has no jurisdiction, for the reason, as it alleges, that the Granada Hotel Company sometime ago conveyed its property to the Granada Apartment Company. The trustee filed also its intervening petition, asserting the same facts, and further, that in a foreclosure suit pending in the state court, a receiver, originally appointed to hold possession of the premises pending foreclosure, had been discharged and that an order had been entered in that court putting the trustee in possession. The trustee contends, therefore, that it is an adverse holder, and that the Court has no jurisdiction over it or the property in its possession. A bondholders' committee appeared for the purpose of attacking the jurisdiction of the court, asserting that the state court proceedings does not constitute an equity receivership within the meaning of Section 77-B.

As the Court has previously pointed out, the intent of Congress apparently was to give the holders of bonds in default an opportunity to have property securing their bonds reorganized in the federal court in lieu of liquidation under foreclosure in either the state or federal court. Act-

ing in pursuance of that right, the creditors, after patience with long extended foreclosure proceedings, not yet blossoming into decree, have filed their petition in proper form and submitted their evidence. The Court finds that the petition was filed in good faith and should be approved.

The Court is not impressed with the contention that the facts related do not constitute an equity receivership, essential to jurisdiction of this court. As is freqeuntly observed, a receiver is a fiduciary of the Court, appointed as an incident to other proceedings wherein certain ultimate relief is prayed. The trustee, here, likewise, is a fiduciary of the state court and is acting under the orders, directions and control of that court. Words of themselves are unimportant; whether the trust be called a receiver, a guardian, a custodian or by some other name, it remains, in its essence, a fiduciary in possession of property pending the outcome of foreclosure, holding under the Court's order, incidentally to the ultimate purpose of the state proceedings. Consequently there is an equity receivership within the meaning of that term as used by Congress.

Upon the question of whether the trustee is an adverse holder the Court at this time expresses no opinion. The effect of any conveyance from one corporation to an-
227 other of similar name is not now before the Court.

Whether the facts are such that there is a holding of title adverse to the trustee is a question which must be determined from evidence submitted after full hearing. It is well recognized that this court has jurisdiction to examine the character of alleged adverse holdings and determine whether claims of adverse title is merely colorable or is asserted in good faith. But this Court is not now examining or determining that question.

The trustee contends that there should be no restraining order against the foreclosure proceedings in the state court. Those proceedings have been pending for some four or five years and have not yet reached final decree. I am advised by counsel that the ultimate effect of a decree will be to bar certain parties claiming some interest. It seems desirable, therefore, that those proceedings be allowed to proceed to a decree. Such prosecution may result in the saving of time and expense in marshaling and liquidation of claims. However, it is desirable that no sale be had until it can be determined what is to be done under the present proceedings. I take it that counsel will not proceed to a sale without further communicating with the Court. Consequently, I shall at this time issue no restrain-

ing order against the prosecution of the foreclosure proceedings to an ultimate decree of foreclosure, but the Court will be open at all times, if necessary, for the purpose of entertaining application for injunction against a sale of the property.

Accordingly the Court finds that there is an equity receivership within the meaning of the statute; that the Court has jurisdiction of the petition; that same was filed in good faith and that a temporary trustee should be appointed, notice given to creditors and hearing had as to the appointment of a permanent trustee. Proper order may be submitted. The Court appoints Fred C. Myers as temporary trustee with directions, however, not to take possession of the property but to investigate and report fully. He should have counsel so that he can determine whether there is reasonable ground for him to invoke the jurisdiction of this court to determine in a summary proceedings whether claim of title is made in good faith or is merely colorable, or whether he should proceed with a plenary suit for such relief as the facts will warrant. Accordingly no bond is necessary at this time.

Entered this 26th day of February, A. D. 1935.

Walter C. Lindley,
Judge.

487A COURT TRUSTEE'S EXHIBIT O-1.

(Stamp) File 12429 J. S. Prouty.

(Stamp) C. J. Zurick Received Aug 24 1933 Referred to File Ans.

Know All Men By These Presents, That we, International and Industrial Securities Corporation, a New York Corporation, in consideration of the sum of Ten (10) Dollars and other good and valuable considerations, receipt whereof is hereby acknowledged, have remised, released and quit claimed, and by these presents hereby do remise, release and quit claim unto Central Republic Trust Company, a corporation, as trustee, under Trust Deed recorded in the Recorder's office of Cook County, Illinois as document 10161996 and to its successors and assigns, to and for their own proper use and behoof forever, all of our right, title and interest in and to such part of the goods, chattels and property as follows:

325	yds	¾ Spec. Axminster cpt for apt.
85	"	5′ 6″ wide spec. Axminster cpt for corridor.
625	"	¾ Spec. Ax. Cpt to cover apt.
375	"	¾ Spec. Vel Cpt to cover apt.
197	"	¾ Spec. Axm. Cpt to cover Apts.
625	"	¾ Spec. Axm. Cpt to cover Apts.
575	"	¾ Spec. Velv Cpt to cover Apts.
124	"	5′ 6″ Spec. Ax. Cpt for corridor.
945	Sq yds	3/8″ Ozite for all corridor.
4470	Sq yds	¼″ Thick Ozite for all rooms.
2	Pc.	Corridor Carpet 5′ 6″/27″ end. Bd.
14	Only	White Door Bed.
235	yds	¾ Spec. Vel. Cpt. for apts.
197	yds	¾ Spec. Ax. Carpet.
124	yds	5′ 6″ wide spec. Ax. Cpt.
197	yds	¾ Spec. Ax. Cpt.
625	yds	¾ Spec. Ax. Apt.
575	yds	¾ Spec. Vel. Cpt.
124	yds	5′ 6″ wide spec. Axm. Cpt.
197	yds	¾ Spec. Axm. Cpt.
625	yds	¾ Spec. Axm. Cpt.
575	yds	¾ Vel. Cpt.
124	yds	5′ 6″ wide Spec., Ax. Cpt.
16	Pc.	Corridor Cpts. 5′ 6″/27″ bd.
96	Only	White Door Beds Rosemont Design.
25	Only	White Kitchen cabinet.
4	Only	White Kitchen Cabinet.
47	Only	White China Cabinet.
21	Only	White Kitchen Cabinet.
47	Only	White Kitchen Cabinet.

as are now in existence and which are located in the building known as the Granada Hotel, Chicago, Illinois.

In Witness Whereof, the said International and Industrial Securities Corporation has hereunto caused its corporate seal to be affixed and these presents to be
487-B signed by is Vice President and attested by its Secretary this 18th day of August, A. D. 1933.

International and Industrial
Securities Corporation,
By William E. Ford,
Vice President.

(Seal)

Attest:
G. E. Morrison,
Asst. Secretary

(Corporate Seal)

496 COURT TRUSTEE'S EXHIBIT O-3.

September 24, 1937

Granada Hotel Appraisal,
530 Arlington Place,
Chicago, Ill.

As per doc. 10161996 of the Recorders Office.

6828 Yds.	Carpet	@	25¢	$1707.00
5415 Yds.	Osite	@	2¢ Sq. Yd.	108.30
110 White	Inadoor Beds	@	$6.00	660.00
97 White	Kitchen Cabinets	@	$8.00	776.00
47 White	China Cabinets	@	$3.00	141.00
				$3392.30

As removal value for the year 1933 (purchase 1924).

J. A. Lenz,
Appraiser.
5074 Lincoln Avenue.

Signed, J. A. Lenz.

464-a COURT TRUSTEE'S EXHIBIT R.

September 10, 1937.

Mr. Weightstill Woods Trustee,
Granada Apartment Hotel,
525 Arlington Street,
Chicago, Illinois.

Dear Sir:

In reference to the information, you desire, on the operating costs, at the Granada Apartment Hotel, 525 Arlington Street, Chicago, Illinois, for the Heating, Lighting, Power, Refrigeration, Hot and Cold Water expense and, the proper charge to the Arlington Apartment Hotel and Lincoln Park Manor Apartment Hotel for the service furnished them by the Granada Apartment Hotel, I beg to report as follows:

All costs given covering operations items are the average costs for 1935 and 1936 with corrections for present market prices.

Heating Costs are divided on a basis of square feet of radiation required to heat each building.

Refrigeration Costs are divided upon the cubic feet capacity of the Ice boxes in each building.

Hot and Cold water is proportioned by the number of apartments.

Appraisals made heretofore on the costs of installation are accepted and used by me in providing for Interest at 5% on cost, 15 years Amortization at 4.3%, maintenance and supplies at 5.7%, Total 15%.

Appraisals are as follows:

464-b Boiler installation, complete with all accessories	$19,000.00
Water Pumps, Tanks, Heaters, etc.	9,230.00
Refrigeration Plant complete	16,280.00
	$44,410.00

The Boiler Room equipment occupies 7990 Square Feet or 86,000 Cubic feet of space in building, which cost seventy cents per foot or $60,200.00 less 24% depreciation leave a present value of $45,752.00, 5% Interest on this item would be $2,287.60 per annum.

No charge has been made to cover this in operating reports submitted but should be considered in fixing rates to the Arlington and Lincoln Park Manor Hotels. The split on this item would be:

Granada — 50%	$1,143.80
Arlington — 29.76%	680.80
Lincoln Park Manor — 20.24%	463.00
Total	$2,287.60

No charges have been made for line losses, this item being absorbed by the cost in operating room. On the basis of costs for the operation of the service as rendered, the proper charges to the Arlington and Lincoln Park Manor Hotel are as follows:

Arlington Apartment Hotel, $9,857.03 per annum or an average of $821.42 per month. Payments should be made upon a basis of $1,067.05 per month for the months of January, February, March, April, October, November, December and, $477.50 for the months of May, June, July, August and September of each year.

464-c Lincoln Park Manor Hotel, $5,969.13 per annum or an average of $497.44 per month. Payments should be made upon a basis of $764.49 per month for the months of January, February, March, April, October, November and December and, $263.54 per month for May, June, July, August and September of each year. If for any reason the Arlington Hotel should discontinue the Refrigeration Service they would be entitled to a credit of $3,998.29 per annum or $333.18 per month.

CONSOLIDATED COSTS.

	Granada	Arlington	Lincoln Park Manor	Totals
Refrigeration Service	4,796.18	3,998.29	1,986.65	10,963.14
Heating Service	5,777.83	4,126.88	2,806.63	12,711.24
Water Service	2,423.14	1,731.86	1,175.85	5,330.85
Granada House Lighting and Laundry	2,543.78			2,543.78
	$15,540.93	$9,857.03	$5,969.13	$31,549.01

REFRIGERATION EXPENSE.

Water—21.050 M. @ 6.8c				1,431.40
Electric Power—241.822.5 K.W. @ 1.6c				3,869.16
Labor				1,230.00
Misc. Repairs				609.90
Insurance—Tax				393.09
15% on $16,280.00 cost of plant to cover interest depreciation, supplies and maintenance				2,442.00
Total Cost	$4,796.18	$3,331.91	$1,655.54	$ 9,965.65

Remarks: 50% Boiler Room Labor.
4% of total tax and insurance paid.

464-d Cost per annum $6.63 per cubic foot, or $33.15 for 5 foot Refrigerators and $56.35 for 8.5 ft. Refrigerators.

	Granada	Arlington	Lincoln Park Manor	Totals
Expense divided on Basis of cubic ft. cap. of Ice Boxes. Granada— 858 ft.—48.95% Arlington— 486.5 ft.—33.434% Lincoln Park Manor— 309 ft.—17.616% 20% operating profit added to outside service	$4,796.18	$ 666.38	$ 331.11	$ 997.49
	$4,796.18	$3,998.29	$1,986.65	$10,963.14

HEATING EXPENSE.

Labor				1,230.00
Electric Power 31375 K.W. @ 1.6c				502.00
125907 Gal. #6 oil @ 4.75c..				5,980.58
Misc. Repairs				600.00
Insurance and taxes				393.09
15% on $19,000.00 investment on Boiler Plant cover interest, dep. supplies and maintenance				2,850.00
	$5,777.83	$3,438.98	$2,338.86	$11,555.67
Expense divided on basis % cu. ft. Granda 50% Arlington 29.76% Lincoln Park Manor 20.24% 20% operating Profit added to outside service		687.80	467.77	1,155.57
	$5,777.83	$4,126.88	$2,806.63	$12,711.24

464e Remarks: 50% Boiler Room Labor.
4% of total tax and insurance paid.
Cost per square ft. of Radiation required—424c per ft.

WATER-HOUSE SERVICE EXPENSE.

	Granada	Arlington	Lincoln Park Manor	Totals
8.764 M. gal. @ 6.8c per Mile				595.35
45618 gal. oil @ 4.75c				2,167.85
25124 K.W. @ 1.6c Power				401.99
Misc. Repairs				100.00
Insurance and Tax				196.55
15% on $9,230.00 cost of plant to cover interest depreciation, supplys and maintenance				1,384.50
	$2,423.14	$1,443.22	$ 979.88	$4,846.24
Proportioned on same basis as Heating.				
20% operating profit added to outside service		288.64	195.97	484.61
	$2,423.14	$1,731.86	$1,175.85	$5,330.85

Remarks: 2% of total tax and insurance paid.
Cost of Water, Heating and Pumping 60.8c per M.

Granada Apartment Hotel

House Lighting, Elevator and Laundry Power Not Included in Other Expense.

House Lighting 1,432.837 K.W. @ 1.6c	2,292.54
Elevated and Laundry Power 157025 K.W. @ 1.6c	251.24
	$2,543.78

Respectfully submitted,
Wm. A. Schott,
Wm. A. Schott,
Consulting Engineer,
426 Diversey Parkway,
Chicago, Ill.

Phone: Bittersweet 4000.

2140 COURT TRUSTEE'S EXHIBIT R.

Memo of Understanding Between Chicago Trust Company and Cody Trust Company In Re Granada Bond Issue.

(1) Chicago Trust Company to receive cash for all outstanding first mortgage items with past due interest figured at 6%, except that:

a. Its commission of $10,000 on its two-fifths share of the new issue of $500,000.00 first mortgage bonds is to be paid, $2,000.00 in cash and $8,000.00 in second mortgage bonds.

b. Any difference between the proceeds of the new first mortgage bond issue and the total amount remaining unpaid on the old loan (past due interest to be figured at 6%), premium, release fees, other charges incidental to the loan, and all charges against the Granada Hotel Corporation which may be a lien prior to the lien of the Trust Deed securing the new loan, is to be taken care of by the sixty day note of the Granada Hotel Corporation, endorsed by the Cody Trust Company, it being understood that the Cody Trust Company receive $15,000.00 second mortgage bonds in lieu of their commission.

(2) It is understood that Cody Trust Company assume the responsibility for clearing title of liens prior to the new first mortgage.

(3) If a first chattel mortgage on the furniture cannot be delivered by February 9 as additional security for the new first mortgage bond issue, an amount of second mortgage bonds up to $50,000.00, sufficient in the judgment of Chicago Trust Company and the Cody Trust Company to protect them in connection with such additional security, is to be left on deposit with Chicago Trust Company until such time as said first chattel mortgage is executed and delivered.

Chicago Trust Company,
By Dayton Kent,
Vice President.

Cody Trust Company,
By Lewis W. Riddle,
President.

883a COURT TRUSTEE'S EXHIBIT U.

884 This agreement, made and entered into this 1st day of October, A. D. 1927, by and between Granada Hotel Corporation, a corporation duly organized and existing under the laws of the State of Illinois, having its principal place of business at 525 Arlington Place, in the City of Chicago, County of Cook and State of Illinois, party of the first part, hereinafter sometimes referred to as Granada Corporation, and Frank E. Barton, owner and operator of the Arlington Hotel, of the City of Chicago, County of Cook, and State of Illinois, witnesseth:

First: Whereas, heretofore the party of the first part has furnished heat, hot water and refrigeration to the Arlington Hotel by means of the installation of heat, hot water and refrigerating systems belonging to the party of the first part and the piping equipment and appliances belonging to the party of the second part for the utilization of such heat, hot water and refrigeration, and the party of the second part is desirous of procuring heating, hot water and refrigeration from the party of the first part for the terms of years hereinafter set forth, and upon the price and terms hereinafter stated, to be furnished to apartment hotel building located upon the premises commonly known as 530-532 Arlington Place, the legal description of which said premises being follows:

Lot Thirty-four (34) and the East Eleven (11) feet of Lot Thirty-five (35) in the Subdivision of Out-Lot "C" of Wrightwood, being a subdivision of the Southwest Quarter of Section Twenty-eight (28), Township Forty (40) North, Range Fourteen (14), East of the Third Principal Meridian, in the City of Chicago, County of Cook and State of Illinois.

Second: Now, therefore, in consideration of the premises and the covenants and agreements herein con-
885 tained, the party of the first part agree to furnish heating from October 1st to April 30th in each year, and hot water and refrigeration continuously at all times to the said premises of the Arlington Hotel, Frank H. Barton, Owner, party of the second part, for a term of six (6) years from August 1, 1927, upon the terms and conditions herein set forth, and the party of the second part agrees to pay to the party of the first part, the sum of Nine Thousand Dollars ($9,000.00) a year for each year of said term, for the said heating, hot water and refrigera-

tion, as follows: Nine Hundred Dollars ($900.00) on the first day of the months of October, November, and December, 1927; nine Hundred Dollars ($900.00) on the first day of the months of January, February and March in each and every year of said term; and Six Hundred Dollars ($600.00) on the first day of the months of April, May, June, July, August and September in each year during said term to and including July, 1933, subject to the conditions herein set forth; the first monthly payment period to commence on the 1st day of October, 1927.

Third: It is further agreed in consideration of the premises that the party of the first part shall not be liable to furnish more, or different heat, hot water, or refrigeration to party of the second part than is adapted to the present installations of the party of the second part, and that is usual and customary for the character of the premises of the party of the second part now existing, and shall not be liable to furnish any more heat, hot water or refrigeration than has been furnished heretofore for the said premises.

Fourth: It is further agreed and understood that the party of the second part shall keep all its piping installations in perfect repair during the term, and it is further agreed and understood that the party of the first part shall not be liable for any failure to furnish such heat, hot 886 water or refrigeration at any time during the term, except for its willful neglect to furnish the same, nor for any failure to furnish heating, hot water and refrigeration due to strikes, mechanical defects, or other causes not under the immediate control of party of the first part, and it is agreed and understood that party of the first part shall not be liable in any way for failure to furnish such heating, hot water and refrigeration due to any defects in the installations, equipment or facilities of the party of the second part, or the failure to keep the same in a good state of repair. It is further agreed and understood that in the event that party of the second part fails to keep its equipment and pipes in perfect condition for the furnishing of heat, hot water and refrigeration without wastage, that the party of the first part shall thereupon be relieved from all obligations to furnish such heat, hot water and refrigeration during all such times of this repair, but shall be entitled during all such times to the payments hereunder specified and to confess judgment therefore as herein stated, and it is further agreed that if such condition of disrepair shall continue for a period

of sixty days, that the party of the first part may then at its election declare this agreement terminated.

Fifth: In the event that party of the second part shall fail to make the payments or any of them herein reserved at the time specified and at the office of the party of the first part, and such default shall continue for thirty days, all obligations to furnish heat, hot water and refrigeration to party of the second part hereunder shall thenceforth cease and be determined at the election of the party of the first part. All payments hereunder may be made by check mailed to the office of party of the first part in Chicago.

Sixth: It is further agreed that party of the first 887 part shall furnish heat before October 1st or after April 30 of each year hereunder whenever it is generally furnished by other hotels of the same class in Chicago and whenever heat may be required to be furnished under the Ordinances of the City of Chicago. And it is further agreed that if party of the first part shall be unable to furnish heat for a time longer than a reasonable period necessary for repairs, etc., that party of the second part shall be entitled to a reasonable abatement or compensation to be paid by it for such period, and should such period extend over sixty days continuously, party of the second part may install its own system and this contract shall thereafter be null and void.

Seventh: If default be made in the payments or compensation hereinbefore reserved, or of any installment thereof as herein provided, the party of the second part does hereby irrevocably constitute any attorney of any court of record in this State, attorney for it and in its name, from time to time, to waive issuance of processes and service thereof, waive trial by jury, and to confess judgment in favor of the party of the first part or its assigns, and against party of the second part for the amount of payments or compensation which may be then due by virtue of the terms or conditions hereof or of any extension or renewals hereof, together with the costs of such proceedings and with reasonabl solicitor's fees and for said purpose to file in said cause its cognovit thereof, and to make any agreement in said cognovit or elsewhere, waiving and releasing all errors which may intervere in any such proceedings, and waiving and releasing all right of appeal and right to writ of error, and consenting to immediate execution upon such judgment: and party of

the second part hereby confirms all that said attorney may lawfully do by virtue hereof.

Eighth: The obligation of party of the second part
888 to pay the compensation reserved hereby during the time hereof, or during any extension hereof shall not be deemed waived, released or terminated, nor shall the right and power to confess judgment given therein be deemed to be waived or terminated by the institution of any such action or by the confession or judgment therein.

Ninth: All covenants, promises, representations and agreements herein contained shall be binding upon, apply and inure to the benefit of the successors and assigns of both of the parties hereto.

In Witness Whereof, the said Granada Hotel Corporation, party of the first part, has caused this instrument to be signed in its behalf by its president or vice-president hereunto duly authorized, and has caused its corporate seal to be affixed hereto, and the said Frank E. Barton, party of the second part, has signed and sealed the same the day and year first above written.

Granada Hotel Corporation,
By Fred D. Mateer,
Its President.

Attest:
D. V. Ball,
Secretary.

Frank E. Barton.
(Seal)

892 COURT TRUSTEE'S EXHIBIT V.

Valuation: The Granada has been appraised by Chicago Trust Company and Cody Trust Company as follows:

Land	$120,000
Building	680,000
Total	$800,000

In addition, and furnishing added security, the furniture and equipment in the Granada are valued at $98,000.

959 COURT TRUSTEE'S EXHIBIT Y-1.

Cashier's Check
City National Bank
2-11 and Trust Company 2-11
of Chicago

Chicago, Ill. May 25, 1937 No. T15655

Pay to the order of Weihtstill-Wood, Trustee in Bankruptcy for Granada Apartments, Incorporated $773.40, Seven Hundred Seventy Three and 40/100 Dollars
Trust Department

A. Arneson J. H. Bouht
Countersignature Trust Officer Vice-President

960 COURT TRUSTEE'S EXHIBIT Y-1.

(Stamps)

Pay to the order of Harris Trust and Savings Bank, Chicago, Ill. (All Prior Endorsements Guaranteed.) 5847 Granada Apartments Inc., Debtor. Weightstill Woods, Trustee. 28. Paid through Chicago Clearing House P. M. May 28, 1937 to the Harris Trust and Savings Bank or pay to the order of any bank or banker. Prior endorsements guaranteed. 2-28. Harris Trust and Savings Bank, Chicago. 2-28.

961 COURT TRUSTEE'S EXHIBIT Y.

(Letterhead of Defrees, Buckingham, Jones & Hoffman).

Chicago, May 25, 1937.

Mr. Weightstill Woods
77 W. Washington Street
Chicago, Illinois

Dear Mr. Woods:

In Re: Granada Apartments, Inc.

We are advised by the City National Bank & Trust Company of Chicago that it has in its Trustee-in-Possession Account $1273.40 and in its Commercial Account $1107.60. It is transferring from the Trustee-in-Possession Account to the Commercial Account $500.00, so that the bills which

you have okeyed for payment may be paid out of the Commercial Account and proper vouchers preserved. Deducting the amount of the bills from the funds on hand leaves $773.40, for which we enclose Cashier's Check of the Trustee, payable to your order.

The check is sent and received by you with the understanding that it is without prejudice, either to you or to City National Bank & Trust Company of Chicago. We are sending it now because you have requested that we turn over the money rather than to send it after the account has been brought down to May 17, 1937, by Barrow, Wade, of Guthrie, the Auditors. As soon as the account has been brought down, it is our intention to file it in court in the bankruptcy proceedings. By that time bills should have been received for every possible unpaid item. It is our thought that when the account is filed, the Court may direct that the Trustee-in-Bankruptcy assume payment of any proper bills not theretofore paid.

As to payroll, the Bank agrees to break that down as of May 15, 1937, the payroll from that date to be assumed by you.

692 Mr. Weightstill Woods

Page No. 2

5/25/37

I have talked to Mr. Hubbard, at the Bank, concerning an item of $160.47, held in an account known as "Reserve Government Tax, Unemployment Compensation Fund." Mr. Hubbard says that the Bank will account for this item to the government, if this meets with your approval.

Will you please deliver the okeyed bills and checks to the bearer.

Yours very truly,
Defrees, Buckingham, Jones & Hoffman
By Vincent O'Brien
Vincent O'Brien

VO'B:d
Encls.
(By Messenger)

1797 COURT TRUSTEE'S EXHIBIT AA.

193 Herrick Road
Riverside, Illinois
October 11, 1937

Mr. Weightsill Woods
Room 1714
77 W. Washington Street
Chicago, Illinois

Dear Sir:

You have handed me copies of five reports relative to costs of building heating, refrigeration and domestic water services for the Granada, Arlington and Lincoln Park Manor apartment hotels, and requested me to give you my comments and criticisms regarding these reports. You have also supplied me with information regarding the actual expenditures for 1935 and 1936 applicable to the expense of generating these services. The five reports were prepared, respectively, by Mr. Samuel R. Lewis, dated August 14, 1929; Mr. Irving L. Hertzman, dated December 23, 1933; Mr. Wm. A. Schott, dated September 10, 1937; Mr. Irving E. Brook, dated September 21, 1937; and Mr. O. W. Dauber, dated October 7, 1937.

Considering these reports in the order of their dates, my comments are as follows:

A—Samuel Lewis, 8/14/29

This report is in general an estimate as regards operating costs, and conveys the engineering judgment of Mr. Lewis in this respect.

(1) Investment costs omit cost of constructing that portion of building housing service equipment, which I estimate at $61,920.00 based on 86,000 cu. ft. from Mr. Schott's report and a unit price of $.72 per cu. ft. This price is above average cost of building because of extra depth and breadth of boiler room, which require more costly retaining walls and overhead beam construction, and represents the excess cost over a building with this volume of basement space omitted.

(2) Allowance for maintenance and supplies, 5.7% is high. Believe 4% is nearer correct.

(3) Estimate of fuel (oil and oil equivalent of coal) for building heating and domestic water heating is approximately 33% higher than used in 1936.

1798 (4) Electric power for fuel burner $37.60. Would expect this to be at least 10 times as much.

(5) Ash removal—$62.00. No ash now produced.

(6) Labor—$5,520. This would be fair estimate if all of the wages of the necessary operators were allocated against services. Good management would use part of the time of these employees for other purposes. Would estimate $3,300.00 (60%) applicable to services.

(7) Total cost—affected by above comments.

(12) & (13) Comment under (1) and (2) covers these items also.

(14) Estimate of total cost of water is lower than reported for 1936.

(15) Estimate of cost of power for water pumping, $2,065.00, seems high. Would estimate not more than half as much.

(16) Estimate of quantity of hot water (391,000 gal.) is evidently a typographical error. Assuming that 3,910,000 gal. is intended this is low. Would estimate 12 gal. per fixture per day, or 5,334,000 gal. per year.

(23) & (24) Comments under (1) and (2) cover these items also.

General—No consideration is given to cost of taxes, insurance, depreciation and interest on value of building space occupied or reduced rental value of space abutting the service equipment rooms. I estimate these items to total $8,074.00.

B—Irving L. Hertzman 12/23/33

This report in general consist of summations of estimated portions of actual totals of certain classes of expenditure. Cost of electricity is obviously estimated too low.

No consideration is given to cost of taxes, interest, insurance or reduced rental value of space abutting service equipment rooms. I estimate these items to total $8,441.00.

In each cost statement in this report an item of 20% of the cost allocated to the Arlington Hotel is set up to
1799 cover depreciation, overhead and profit. This is an incorrect treatment of depreciation, which is a fixed charge and should be considered separately. I estimate that depreciation should be $3,861.00, based on 3% for building and 4.5% for equipment. The 30% portion of depreciation item, $1,158.00, exceeds in each instance the amount set up for depreciation, overhead and profit.

Because of the limited market for this service, I believe

that the item of profit only should be not less than 20% of the total cost including depreciation. Should the customer cease to purchase service from the Granada Hotel it is improbable that a replacing customer could be obtained. In such case the burden of the fixed charges and operating labor normally assessed against this customer would fall entirely upon Granada. In the case of the Arlington, these amount to 30% of $13,562.00, or $4,069.00.

C—Wm. H. Schott 9/10/37

Allowance for maintenance and supplies, 5.7% is high. My experience indicates that 4% is nearer correct for this class of equipment.

Estimate of cost of constructing that portion of building which houses the service equipment is conservative. I believe it should be slightly higher because of the extra depth of boiler room, requiring more costly foundation and retaining walls and the width, which requires more expensive floor construction above. I can see no justification for reducing this building construction cost by 24% depreciation to obtain cost upon which to base the item of interest. This is doubtful accounting practice and is not in accordance with the custom of the Federal Income Tax Bureau.

No consideration is given to depreciation on the portion of building housing service equipment. My estimate for this item is $1,858.00, based on a 3% depreciation rate on cost of $61,920.00.

To check the division of costs in this report I have calculated the percentage allocation of costs to the Granada, Arlington and Lincoln Park Manor, based upon information contained in the various reports regarding radiation, water fixtures and refrigerators in the respective buildings, weighting each service with its approximate operating cost and find as follows:

1800

	My Calculations	This Report
Granada	50.4%	50%
Arlington	30.3%	29.76%
Lincoln Park Manor	19.3%	20.24%

The total amount of insurance payments and taxes shown is $982.73. This is low. My estimate is $2,263.00, based upon a tax rate of $.018 per dollar for $106,400.00 and $348.00 for proportionate part of fire and workman's compensation insuranc and all insurance on boilers and refrigerating equipment.

This report sets up a flat rate of 5.7% to cover cost of maintenance and supplies and in addition sets up items totaling $1,300.00 for miscellaneous repairs.

Maintenance and repairs are generally considered synonomous and to some extent these items are duplicate charges.

No consideration is given to the reduction in rental value of space abutting the service equipment rooms because of noise of machinery and heat emanating therefrom. I am advised that there are eleven units in this category, with a total present rental value of $6,000.00 per year. I estimate these units are adversely affected to the extent 12.5% of their value. This item of loss, therefore, is $6000—6000 .875 =$857.

Other than noted above the operating costs set up seem reasonable.

Modifying the results in this report by the above comments gives comparative results as follows:

	Mr. Schott's Report	My Estimate
Total operating expense (profit omitted)	$26,367.56	$31,880.00
Allocated to Granada	12,997.15	16,067.00
Allocated to Arlington	8,214.11	9,660.00
Allocated to Lincoln Park Manor	4,974.28	6,153.00

To the amounts allocated to the Arlington and Lincoln Park Manor should be added a fair profit. Because of the limited market for these services and the relatively large part of the annual costs represented by fixed charges, I believe that this should be not less than 20% of the total annual cost.

1801 D—Irving E. Brooke 9/21/37

This report contains an estimate of the investment cost of a suitable service plant for the Arlington Hotel and an estimate of the annual cost of operating such a plant.

(A) Construction and Installation Cost, Heating System

(6) Foundations—Estimate is low. $250.00 would be nearer cost.

(7) Stack. Estimate is fair for stack delivered to site.

Cost of erection in existing building would probably be $300.00.

Estimate includes stocker which infers use of coal as fuel. Estimate makes no provision for construction of coal bin.

Estimate makes no provision for construction of basement space for this equipment, nor does it make allowance for use of first floor space if equipment is to be located thereon. The cost of a suitable basement room to house the service equipment described in this report would be approximately $12,000.00, if constructed so as to avoid undue interference with the normal operation of the hotel.

(B) Operating Expense

(B-1) Fixed charges

Fixed charges are set up at 15%. This is high. A fair figure would be 12%.

(B-2) Operating charges.

Labor and attendance, $300.00. This is a very low estimate for a heating plant using coal fuel, even considering part time attendance. Based on attendance at $1.00 per hour I estimate this item at $800.00.

Water Supply System

See comments regarding cost of providing space, under "Heating System".

(1) Water Heater. Estimate does not indicate type of fuel for this heater and makes no provision for storage of fuel.

(11) Electric Wiring, $125.00. This estimate is 1802 too low for wiring four pumps. $250.00 would be nearer correct.

Fixed charges are too high. Interest 5%, depreciation 4.5% and taxes and insurance at 2.5% are adequate.

Electric current, $125.00. Believe $175.00 would be nearer correct.

No allowance has been made for fuel for water heating. If coal is used this item would be approximately $350.00.

Labor and Attendance, $50.00. This estimate is very low. My estimate for labor at $1.00 per hour is $365.00 per year.

Refrigerating System

Fixed charges 15% are too high. 12% is approximately correct.

Electric current, $200.00. This estimate is very low. Based on 50% load factor this cost would be approximately $750.00.

Water, $175.00. Believe this estimate is too low. $300.00 would be nearer correct.

Repairs and maintenance, $50.00. This is too low. This class of machinery will average 4.5% of cost for repairs and maintenance, or $157.00.

Labor and attendance, $25.00. Believe this estimate should be not less than $90.00.

Based on the foregoing comments the total annual operating expense of this project would be $8,539.00, compared with $5,405 shown in the report.

O. W. Dauber 10/7/37

This report deals with operating costs stated to be a matter of record.

Some criticism might be offered as to division of these costs between the various services, but corrections of this nature would have little effect upon the conclusions given in the report.

Fixed charges of 11.5% (interest 6%, depreciation 3%, insurance and taxes 2.5%) have been applied to cost of service equipment only. I believe that fixed charges 1803 of 12% (interest 5%, depreciation 4.5%, insurance and taxes 2.5%) are more nearly in line with prevailing practice in respect to service equipment, and 10.5% in respect to buildings of the character of the Granada Hotel.

This engineer has entirely neglected consideration of the cost of that part of the building which houses the service equipment.

My estimate of the excess cost of constructing the basement space housing the service equipment is $61,920.00 as explained earlier in my report.

No consideration has been given to the reduction in rental value of space abutting rooms housing service equipment. I am advised that there are eleven units in this category, with a total present rental value of $6,000.00 per year. I estimate that these units are adversely affected to the extent of 12.5% of their value. The loss, therefore, is $6000—6000=$875.00.

.875

Giving consideration to the above mentioned items, the costs in the report of Mr. Dauber would change as follows:

	O. S. Dauber 10/7 37		With Added Costs	
	Total	Allocated to Arlington	Total	Allocated to Arlington
Heating	$ 8,964	$2,555	$11,835	$3,373
Refrigeration	8,413	2,860	10,775	3,663
Hot water	3,235	983	3,844	1,169
Cold water	1,761	535	2,514	764
Total	$22,373	$6,933	$28,968	$8,969

The report states that "a profit of 10% could reasonably be charged". Because of the limited market for this service and the improbability of obtaining new customers should a customer cease to purchase this service, I believe a profit of 20% is justified.

General

All of the reports examined have failed to give adequate consideration to the cost and fixed charges thereon of the building space in which the service equipment is housed.

All reports have failed to give any consideration to the detrimental effect of service equipment operation upon adjacent rental space.

I am not qualified to give expert advice upon this point but have included in the foregoing comments this item, evaluated according to my small experience in this respect.

Respectfully submitted,

W. R. Loveless.

W. R. Loveless.

WRL/JW

1825-A COURT TRUSTEE'S EXHIBIT BB.

Comparison

	Schott		Dauber	Difference
Refrigeration	$10,961.70		$8,413.00	$2,548.70
Water		Short	610.40	
Power		Over	227.28	
Repairs		Short	200.00	
Ins. & Tax		Over	13.91	
Int. Dep. Maint. & Amorz.		Short	977.00	
Op. Profit		Short	997.49	
	Shortage		2,784.89	
	Overage		235.29	
	Net Shortage		$2,549.60	= Out 90c
Heating	$12,394.96		$8,964.00	$3,430.96
Labor		Short	246.00	
Fuel		Short	650.58	
Power		Short	99.02	
Repairs		Short	250.00	
Ins. & Taxes		Over	81.91	
Int., etc.		Short	1,140.00	
Op. Profit			1,127.27	
		Shortage	$3,512.87	
		Overage	81.91	
			$3,430.96	bal.
Water	$5,321.96		$4,996.00	$ 325.96
Water		Over	643.15	
Labor		Over	246.00	
Power		Over	59.68	
Fuel		Short	287.85	
Ins. & Tax		Over	33.45	
Int., etc.		Short	554.50	
Op. Profit		Short	484.61	
		Short	1,326.96	
		Over	982.28	
			$344.68	Out $18.72

P.S. Oil Used 171.525 gals.
Estimated 161.700

Shortage 9.825

1877 COURT TRUSTEE'S EXHIBIT 2.

The Arlington, Inc.
Second Floor
208 So. LaSalle St.
Chicago

September 29, 1937

Weightstill Woods, Esq.,
77 West Washington Street,
Chicago, Illinois.

Re: Granada Apartments, Inc.

Dear Mr. Woods:

We understand you have requested payment of an additional $1,000 on account of services being furnished by the Granada to the Arlington.

Your petition for instructions from the court as to the amount to be collected for services used and to be used is pending on hearing before Judge Barnes.

Until it is determined we are willing to continue payments on a month to month basis at the rate of $600 per month for services used, such payments to be without prejudice and to be subject to adjustment to conform to the ultimate finding as to the amount to be charged.

If this meets with your approval, please let us know and we will make remittance on this basis.

Very truly yours,
The Arlington, Inc.
By W. G. Sturm,
W. G. Sturm,
Vice-President.

WGS:MG

CITY NATIONAL EXHIBIT 1.

January 15, 1932, decree entered.

The material portions of the decree follow:

Cause having been brought on to be heard upon the petition of Albert Pick & Company and the supplemental petition of International and Industrial Securities Corporation, the answers thereto of Chicago Title and Trust Company, receiver, Chicago Trust Company, as trustee under Document 10161996, and of William Thuma and Chicago Trust

Company, as trustee under Document 10162332, the court finds:

1. That it has jurisdiction of the subject matter and of the parties aforesaid.

2. That Albert Pick & Company is a corporation organized under the laws of the State of Illinois, having its principal office in the City of Chicago and is and was prior to the filing of its petition engaged in the business of selling furniture, furnishings and equipment for hotels, etc.

3. That on August 20, 1924, Granada Hotel Corporation owned in fee simple the real estate at 525 Arlington place, Chicago, Illinois; that on said date, said premises had just been improved with a large hotel building; that Granada Hotel Corporation purchased from Albert Pick & Company for $107,096.84 all or most of the furniture, furnishings and equipment for said building and paid on account of the purchase price $24,000 in cash and made, executed and delivered to Albert Pick & Company 31 promissory notes dated August 20, 1924, aggregating $83,096.84, bearing interest at 7 per cent per annum, and payable note No. 1 December 19, 1924 notes No. 2 to No. 30 one each month on the 1st of each and every month in numerical order commencing with note No. 2 due October 1, 1924, and continuing through note No. 31 which was due March 1, 1927.

4. That to secure the said notes, Granada Hotel Corporation made, executed and delivered its chattel mortgage to Albert Pick & Company dated August 20, 1924, acknowledged on the 29th day of August, 1924, by its president and secretary, and acknowledged also before the clerk of the Municipal Court of Chicago and filed on the date last aforesaid for record in the recorder's office of Cook County, Illinois, as Document 8570591, conveying such of the goods and chattels located in said hotel premises more particularly described later in said decree), and that said chattel mortgage was duly and properly extended and renewed by the affidavit of the mortgagor and mortgagee in accordance with the laws of the State of Illinois.

5. That on May 19, 1928, Granada Hotel Corporation owed on account of the principal of the aforesaid notes $54,173.45, with interest up to March 27, 1928, of $14,469.82; that notes 1 to 6 had been paid but that on May 19, 1928, notes 8 to 31, both inclusive, were in default by their terms and under the terms of said renewal, and that said chattel mortgage was and is a part purchase money chattel mortgage.

6. That on May 19, 1928, Albert Pick & Company filed

in the Circuit Court of Cook County in Case No. B-162869 a bill to foreclose said chattel mortgage; that summons issued therein, was duly served on Granada Hotel Corporation on May 30, 1928; that said corporation filed its appearance and answer the cause was referred to a master in chancery, evidence was taken and the master rendered his report on November 13, 1928, upon which a decree was entered in said cause finding the averments of the bill of complaint therein to be true and finding due Albert Pick & Company $71,437.65 with costs and expenses of said proceeding and finding that no other person had or claimed any right, title or interest in and to the "premises" involved therein paramount and superior to the rights of Albert Pick & Company and that the property should be sold to satisfy the amount found due.

7. That said decree further provided that upon sale, Granada Hotel Corporation and all persons claiming by, through or under them should be forever barred and foreclosed of any claim of, in and to said personal property, and that upon execution and delivery of bill of sale the grantee should be let into possession of said personal property and that all persons parties to the cause who might be in possession thereof and all persons who since the commencement of said suit should have come into possession under them, or any of them, should on production of said bill of sale at once surrender possession, in default of which a writ of assistance should issue.

8. That Elof Wenstrand asserted some claim by virtue of an assignment to him on August 25, 1928, of the right, title and interest in and to said personal property acquired by Lynch Clarisey Company by reason of a sheriff's sale held July 17, 1928, under an execution on a judgment in favor of Lynch Clarisey Company, individually, and against Granada Hotel Corporation; that said Wenstrand on November 23, 1928, filed a bill in equity in the District Court of the United States for the Northern District of Illinois, Eastern Division, to restrain said master in chancery of the Circuit Court and said Albert Pick & Company from proceeding with the sale by said Circuit Court decree ordered and that said sale had been published for and was to have been held on November 24, 1928.

9. That said bill in the District Court of the United States was dismissed for want of equity and that the decree dismissing it was affirmed by the Circuit Court of Appeals for the Seventh Circuit, and that a petition for writ of certiorari to the Supreme Court of the United States to re-

view said decision was on June 2, 1930, denied and a mandate issued by the said Circuit Court of Appeals directing that the Wenstrand bill be forthwith dismissed; that pending said federal court litigation, a temporary restraining order was issued by the District Court of the United States aforesaid, whereby said master in chancery and said Albert Pick & Company were restrained from selling the said personal property under said Circuit Court decree and that by reason of said restraining order they were prevented from proceeding with the said sale for a period from November 23, 1928, to June 4, 1930.

10. That upon the issuance of said mandate, Albert Pick & Company again published for the sale, in accordance with said Circuit Court decree, which sale was held on June 11, 1930, and Albert Pick & Company bid in the said personal property by its said chattel mortgage sold and conveyed for the sum of $20,000, and that International and Industrial Securities Corporation, as assignee of Albert Pick & Company, is now the sole owner of said chattel mortgage property and entitled to immediate possession thereof.

11. That on June 14, 1930, a decree was entered in said Circuit Court proceeding confirming the master's report of sale and distribution and allowing Albert Pick & Company judgment for $58,079.44 against Granada Hotel Corporation, and that on June 11, 1930, the said master in chancery executed and delivered to Albert Pick & Company a bill of sale conveying to it such of the property located on the premises at 525 Arlington place, Chicago, Illinois, as is described as follows, to wit:

(Here is set forth detailed description of the chattel mortgage property, including the carpets, ozite, in-a-dor beds, kitchen cases and china cases claimed by the respondents to be fixtures and part of the realty); and that International and Industrial Securities Corporation, as assignee of Albert Pick & Company is the owner and holder of said bill of sale and the owner of said chattel mortgage property and entitled to the possession thereof.

12. That on June 10, 1930, William A. Thuma exhibited his bill in chancery herein to partially foreclose a junior mortgage on the real estate at 525 Arlington place, Chicago, Illinois, and on June 11, 1930, on his motion, Chicago Title and Trust Company was appointed receiver for the said real estate; that on June 11, 1930, Albert Pick & Company demanded from Chicago Title and Trust Company the return of the chattel mortgage property, which demand

was refused and is still refused, except as thereafter found in said decree.

13. That on June 24, 1930, an order was entered herein on Chicago Title and Trust Company directing it to surrender to Albert Pick & Company all of the property described in its said chattel mortgage and in its possession, excepting the following described property:

325 yds	¾ Spec. Axminster cpt for apt.
85 "	5′ 6″ wide spec. Axminster cpt for corridor.
625 "	¾ Spec. Ax. Cpt to cover apt.
575 "	¾ Spec. Vel Cpt to cover Apt.
197 "	¾ Spec. Axm. Cpt to cover Apts.
625 "	¾ Spec. Axm. Cpt to cover Apts.
575 "	¾ Spec. Velv Cpt to cover Apts.
124 "	5′ 6″ Spec. Ax. Cpt for corridor.
945 Sq yds	⅜″ Ozite for all corridor.
4470 Sq yds	¼″ Thick Ozite for all rooms.
2 Pc.	Corridor Carpet 5′ 6″/27″ end. Bd.
14 Only	White Door Bed.
235 yds	¾ Spec. Vel. Cpt for apts.
197 yds	¾ Spec. Ax. Carpet.
124 yds	5′ 6″ wide spec. Ax. Cpt.
197 yds	¾ Spec. Ax. Cpt.
625 yds	¾ Spec. Ax. Cpt.
575 yds	¾ Spec. Vel. Cpt.
124 yds	5′ 6″ wide spec. Axm. Cpt.
197 yds	¾ Spec. Axm. Cpt.
625 yds	¾ Spec. Axm. Cpt.
575 yds	¾ Vel. Cpt.
124 yds	5′ 6″ wide Spec. Ax. Cpt.
16 Pc.	Corridor Cpts. 5′ 6″/27″ bd.
96 Only	White Door Beds Rosemont design.
25 Only	White Kitchen cabinet.
4 Only	White Kitchen Cabinet.
47 Only	White China Cabinet.
21 Only	White Kitchen Cabinet.
47 Only	White Kitchen Cabinet.

as to which jurisdiction is reserved by the court to determine whether or not Albert Pick & Company is entitled to possession thereof, and that Albert Pick & Company did in accordance with said order remove from said premises all of the property in said order directed to be surrendered to said Albert Pick & Company.

14. That said receiver has had possession of the property in said order of June 24, 1930, directed to be surrendered from the date of its appointment to the date of

removal and is now in possession and has been in possession since its appointment of the property aforesaid alleged to be fixtures and part of the real estate, except such portion of the carpet as was repossessed by Albert Pick & Company pursuant to said order of June 24, 1930.

15. That the trust deed sought to be partially foreclosed in this proceeding is dated September 1, 1928, and was not recorded until October 1, 1928, and that it conveys as security for the indebtedness therein described the right, title and interest of Granada Hotel Corporation in and to the said real estate and premises, together with any and all fixtures that might then be in any building or might be placed in any building then or thereafter standing on said premises, together with all rents, issues, income and profits which should thereafter accrue from said premises which were assigned and transferred to said trustee.

16. That said trust deed last aforesaid was made and recorded almost four years after the recordation of the said chattel mortgage and was made and recorded after the bill of complaint of Albert Pick & Company to foreclose its chattel mortgage had been filed as aforesaid, and after complete lis pendens had attached, and that said trust deed is in all respects subject and subordinate to the bill of sale issued in said Circuit Court proceedings aforesaid.

17. That Chicago Trust Company took from Granada Hotel Corporation a chattel mortgage dated January 12, 1925, granting, conveying and selling to Chicago Trust Company certain goods and chattels, including all of the property alleged to be fixtures and part of the real estate as hereinabove set forth, and that in and by said chattel mortgage it was provided that the goods and chattels therein conveyed were free from all encumbrances, except such purchase money chattel mortgages as might have been therefore duly executed and entered of record.

18. That the said real estate and premises are improved with a building containing 206 rooms operated as an apartment hotel, containing apartments consisting of one, two, three and four rooms of the Pullmanette and dining kitchen type.

19. That the mortgage sought to be partially foreclosed herein and recorded as Document 10162332 and the first mortgage trust deed recorded in the Recorder's Office of Cook County, Illinois, as Document 10161996 were made to secure the indebtedness therein respectively described, which indebtednesses were incurred by Granada Hotel Corporation through loans made for the purpose of paying

in full, at a premium as provided in said trust deed, the then unpaid balance of the indebtednesses respectively secured by a first and second mortgage on said premises made in 1924, the said 1924 first mortgage having been recorded in the Recorder's Office of Cook County, Illinois, as Document 8284566, and the 1924 second mortgage having been recorded in said office as Document 8295914; that said new loans evidenced and secured by the present first and second mortgages aforesaid were made at the special instance and request of the Granada Hotel Corporation as owner and were to be respectively secured by first and second mortgage liens upon said premises; that the proceeds of said new loans evidenced and secured by the present first and second mortgages aforesaid were used to pay, at the premium provided for in the 1924 trust deeds, the then unpaid evidences of indebtedness respectively secured by the 1924 trust deeds aforesaid; that the 1924 mortgages aforesaid were recorded as Documents 8284566 and 8295914 prior to the recordation of the chattel mortgage held by Albert Pick & Company as aforesaid; that the proceeds of the loans respectively secured by said trust deeds recorded as documents 10162332 and 10161996 respectively, being the present second and first mortgage trust deeds respectively, were disbursed and paid long after the aforesaid chattel mortgage from Granada Hotel Corporation to Albert Pick & Company had been recorded in the Office of the Recorder of Cook County, Illinois, and after a complete *list pendens* had attached under the suit brought by Albert Pick & Company in the Circuit Court of Cook County, Illinois, as aforesaid.

20. That the said trust deeds Documents 8284566 and 8295914, being the aforesaid 1924 mortgage trust deeds respectively, were made to secure loans, the proceeds of which were used and disbursed in and about the erection of the improvement upon the said real estate and premises; that the said improvement was designed and built to contain Pullmanette apartments and was planned to accommodate kitchen cases, china cases, carpet and in-a-dor beds similar in type to those sought to be recovered by Albert Pick & Company; that all of the said carpet was made, sewed and measured to fit the various rooms and corridors in and about the improvement on said premises; that in the laying of said carpet a material known as ozite and first placed over the rought cement floor of the corridors and apartments, which floor was otherwise left unfinished. The said ozite was not fastened to the floors

or the building in any manner whatsoever, except that it was glued to said floors only at the seams with a starchy substance known as dextrine and that the said carpet was laid over the ozite and nailed to wooden strips designed for the purpose of nailing carpets thereto; that said wooden strips were sunk into the floor along the walls of said apartments and corridors and that said ozite and carpets can be removed without injury either to the ozite and carpet itself or to the floors or any part of the realty; that the in-a-dor beds claimed by the petitioner were regular stock in-a-dor beds and were not made or constructed specially for the order of Granada Hotel Corporation; that said beds were installed in certain of the rooms in and about said premises at the time of the erection of said building; that each of said beds is attached to a door which is suspended on a perpendicular set in two pivots, one placed in the cement floor and the upper one in the upper portion of the door frame, to which perpendicular is attached a wooden panel, which, when the bed is closed and not in use, forms part of the wall of the room; that metal sockets were screwed to the doors and in-a-dor beds placed in said sockets; that the beds can be removed by merely lifting said beds about 2 inches and removing them from said sockets and without causing any injury to said beds or to the doors or to any part of the said realty; that immediately adjacent to each side of the panels is a door, each of which doors opens into a cloak room in which the bed hangs suspended when not in use, and that the said doors were designed to accommodate the type of in-a-dor beds installed, but that other in-a-dor beds could have been and still can be procured in lieu of the in-a-door beds claimed by the petitioner herein.

21. That the kitchen cabinets claimed by the petitioner were regular stock cabinets and were not made or constructed specially to the order of Granada Hotel Corporation. The said kitchen cabinets were placed on rough wooden blocks on the unfinished concrete floor of the kitchens in said building and were not attached or fastened to the floors in any manner. Several inches of space were left between the sides of said kitchen cabinets and the walls adjacent to said sides. The said cabinets consist of an upper and lower portion, the upper portion containing a board on the bottom and various compartments, and the lower portion containing drawers and compartments; that in one end of the lower portion, refrigerator coils are located, which coils are attached by pipes to the main

pipes, installed in and about the premises carrying supplies of brine to and from the respective coil in said cabinets; that said connections were made from the rear of the cabinets toward the leads and drains; that said leads and drains are insulated; that the spaces between the sides of the kitchen cabinets and walls adjacent to said sides were covered with scribing boards wedged in between the sides of the said cabinets and the walls adjacent thereto.

22. That the china cases sought to be recovered by the petitioner are placed in certain rooms of said building, two to a room, and are placed immediately between the kitchen and dining portion of the dining kitchen and are also placed on the rough concrete floor; that in each room where said china cases were placed one was so placed as to conceal the kitchen sink and the other to conceal the gas range from the dining portion of the particular apartment; that said china cases were regular stock china cases and were not made or constructed specially to the order of Granada Hotel Corporation; that they were attached to the floor by nails driven through the bottom of said china cases to wooden nailing strips and were attached to the walls adjacent to their sides by nails driven through said sides into wooden nailing strips in said walls and that all of said china cases can be removed without injuring said china cases or the walls, floors or any part of said realty.

23. That Chicago Trust Company made and delivered its check dated December 31, 1924, for $7,000 payable to the order of Albert Pick & Company as a payment to Albert Pick & Company to apply on account of the purchase price due it for the property sold to Granada Hotel Corporation and that said check was paid out of the proceeds of the loan made by Chicago Trust Company to Granada Hotel Corporation secured by the aforesaid 1924 trust deeds.

24. That neither Chicago Trust Company as trustee under said new first mortgage, nor the holders of the evidences of indebtedness by said trust deed described are subrogated to the rights of the trustee under the former first mortgage aforesaid, or to the rights of the holders of the evidences of indebtedness by said former first mortgage secured, and that the rights of the holders of the evidences of indebtedness described by the said former first mortgage made in 1924 are subject and inferior to the rights of the said petitioner in and to all of the chattel mortgage property aforesaid.

25. That Albert Pick & Company and Granada Hotel Corporation expressly agreed that all of the property described in and conveyed by the said chattel mortgage should remain personal property and that said agreement is binding upon all parties hereto, and that none of said chattel mortgage property was so annexed or affixed to the building or adapted to or necessary for the use of the building as to make it part of the realty contrary to said agreement.

26. That all of the parties hereto are bound in all respects by the decree entered by the Circuit Court of Cook County, Illinois, as aforesaid.

It is, therefore, ordered, adjudged and decreed that said receiver forthwith surrender to International and Industrial Securities Corporation all of the property described in and secured by the said chattel mortgage to Albert Pick & Company remaining in and about the premises commonly known as 525 Arlington place, Chicago, Illinois.

The court retains jurisdiction of the parties for the purpose of hearing and determining the question as to what compensation is to be paid by the receiver for the use of any of the aforesaid property described in said chattel mortgage.

682 CITY NATIONAL EXHIBIT NO. 2.

Samuel R. Lewis
Consulting Mechanical Engineer.
407 S. Dearborn Street, Chicago
Telephone, Wabash 6675

January 31, 1934

Memorandum

Re: Granada, Arlington and Lincoln Park Manor.

Arlington now pays $940.00 per months $11,280.00
Lincoln Park Manor now pays $635.00 for 6 mos.
$466.00 for 6 mos. 6,610.00

Actual fuel cost
Heating and hot water heating

1931	$6970.00
1932	6494.00
1933	7066.00
	$20530.00

3=$6843.00 average

Granada 114 units
Arlington 91 units
Total lights, plus power at Granada $6892.00
Lights and elevator at Arlington $2400.00=$26.44 per unit

91

Granada 114 units x $26.44=$3014.00 Granada lights and elevators.

$6892 — $3014 = $3878.00 cost of power at Granda for all three buildings.

683 CITY NATIONAL EXHIBIT 3.

August 14, 1929

Cody Trust Company
105 So. LaSalle St.
Chicago, Illinois.

Gentlemen:

You have asked us to report on the cost of operation of the Granada-Arlington-Lincoln Park Manor group of hotels.

As we are advised, you wish to know the unit cost for operating the project as a whole and the same unit cost as applied to each of the three buildings, in order that an equitable charge for service of heating, hot water and refrigeration may be established for each of the three hotels.

In our judgment it is feasible, lacking exact material knowledge, to apportion the costs to the following basic heads:

Heating: Square feet of radiation

(a) Interest, Depreciation, Supplies and Maintenance.
(b) Fuel
(c) Power for Fuel Burner
(d) Ash Removal
(e) Labor

Water:

1. Refrigerating Machine Condenser
2. One Opartment Unit consisting of Kitchen and Bathroom

(a) Interest and Depreciation, Supplies and Maintenance on that part of the plant which serves all three buildings.
(b) Cost of Water
(c) Cost of Pumping
(d) Cost of heating the hot water

Refrigeration: Ice Box

(a) Interest and Depreciation, Supplies and Maintenance on that part of the plant which serves all three buildings.
(b) Condensing water.
(d) Electric Power

We will count the engineer's labor all with the heating as it is difficult to apportion any particular percentage to the water or to the refrigeration, and the spread should be as fair by the heating unit as by any other unit.

684 In the light of these premises we arrive at the three unit costs for the complete plant as follows:

Heating.

1.	Investment cost of boilers, oil burners, tanks and chimney in Granada.....	$19,000.00	
2.	Per year interest, depreciation, maintenance and supplies Interest at 5% 15 yr. amortization at 4.3% Maintenance and supplies at 5.7% Total 15% on above.....	$ 2850.00	
3.	Per year—Cost of oil, 141,926 gals. at .04¼	$6,031.85	
	Pr Yr. Cost of Coal, 247.5 tons at $6.50	1,608.75	
	Total		7640.60
	(less cost of water heating, line 14 which has been deducted.)		
4.	Per Yr.—Power for fuel burner 2150 Kw. Hr. @ $.0175.....		37.60
5.	Per Yr. — Ash Removal.....		62.00
6.	Per Yr. — Labor (12 mos. @ $410.00) (4 mos. @ 150.00)		5520.00
7.	Total Annual cost of heating.....		16110.20
8.	This divided by 32,100, the total number of sq. ft. of radiation in all three buildings, gives a unit cost per sq. ft. of radiation of		0.501875

The cost of heating each of the three buildings therefore is:

9.	Granada	—17,500 sq. ft.....	8782.84
10.	Arlington	— 8,500 " "	4265.91
11.	Lincoln Pk. Manor	— 6,100 " "	3061.45
	Total—same as (7)		16110.20.

Water.

12.	Investment cost of water pumps and water heaters in Granada	9230.00
13.	Per Yr. Interest, depreciation, supplies and maintenance on above at 15%	1384.50

684-1

14.	Per Yr. Cost of one half of water purchases. (The other half is charged to refrigeration	$ 993.38
15.	Per Yr. Cost of pumping water..... There are three pumps with 45 H.P. connected load. We assume a load factor of 40% and compute the power at $.0175 per K.W.	2065.00
16.	Per Yr. Cost of heating water..... This is estimated at 391,000 gals. from 40 to 180 degrees using oil having 148,675 B.t.u. per gal. at 80% efficiency, costing .04¼c per gal. This sum was deducted from item (3).	1962.02
17.	Total Annual cost of Water.....	6404.90
18.	This divided by 253, the equivalent total number of water using units in all three buildings, gives a cost per unit of	25.3158
19.	We have checked the plans and the buildings carefully, and find that the water-using units, each unit consisting of a bathroom with tub, a kitchen, lavatory and toilet, are as set forth below. We show also the cost for each building:	
20.	Per Yr. — Granada — 109 equiv. units cost	2759.42
21.	Per Yr. — Arlington — 86 equi. units cost	2177.16
22.	Per Yr.—Lincoln Pk. Manor—58 equiv. units cost	1468.32
	Total—Same as (17).....	$6404.90

No account is taken of the small volume of water used for make-up in the boilers, as it is infinitesimal in proportion. There are separate laundries, so that we seem reasonable fair in dividing the water-cost in proportion to the basic units.

684-2

Refrigeration

23.	Investment cost of the apparatus in The Granada, consisting of compressor, condenser, brine coolers, pumps, tanks, etc. but not including the individual refrigeration or ice boxes	$16,280.00
24.	Per Yr. Interest, depreciation, supplies and maintenance on above at 15%	2,442.00
25.	Cost of condensing water, per yr	993.38
26.	Per Yr. cost of electricity for compressor and for brine pumping @ $0.0175 per Kw.	4,375.00
27.	Total annual cost of refrigeration	7,810.38
28.	This divided by 226, the total number of ice box units in all three buildings, gives a cost per unit of	34.559
29.	We have checked the plans and the buildings and find that the ice box units are as set forth below. We show also the cost for each building:	
30.	Granada—96 ice boxes cost	3,317.68
	Arlington—77 ice boxes cost	2,661.06
	Lincoln Park Manor—53 ice boxes cost..	1,831.64
	Total (same as 27)	7,810.38

Based on these figures, the cost of the heating, water and refrigeration service to each of the three buildings is as follows:

31:	Granada	$14,859.94
32.	Arlington	9,104.13
33.	Lincoln Park Manor	6,361.41

If these three buildings are to be operated as separate entities and the Granada is to furnish service as a landlord to the Arlington and Lincoln Park Manor, something more than the bare cost of furnishing the service should be paid by the tenants.

684-3 It must be admitted that administrative costs in accounting, purchasing, etc. and some hard-to-estimate costs for the trouble of looking after the mechanical equipment of the tenant will accrue to the Granada in case it furnishes service, which would not accrue if it were separate.

The existing boiler and machinery equipment in the

Granada also would last longer if used at light load for the Granada alone than if compelled to serve also the Arlington and the Lincoln Park Manor, though the exact dollar value of both administrative and wear and tear items is difficult to estimate.

In lieu of such estimate, however, the tenants should admit in equity that they ought to pay any landlord enough beyond the bare cost to him of the service which he renders, to make him solicitous for their comfort and happiness.

A fair way to arrive at this purchase price for good will would be to pay a percentage of the cost in excess thereof. Any contractor expects at least a 20% margin over bare cost, when he carries out a fixed-price contract and assumes the burdens of maintenance, accidents, etc. On this basis the

34. Arlington, with a cost of $9104.13 would pay to the Granada $10,924.95
35. The Lincoln Park Manor, with a cost of $6,361.41 would pay to the Granada..... 7,633.69

Yours respectfully

SRL-IH (signed) Samuel R. Lewis.

684-4 Lincoln Park Manor

To visualize the cost to the tenants, in case they should elect to install and to operate their individual plants, we suggest the following as a fair tabulation:

36. Investment by Lincoln Park Manor.

(a)	New Chimney and Supports	$4500.00
(b)	Boilers and Piping	3500.00
(c)	Boiler pit and foundations	1500.00
(d)	Oil burners and tanks	1300.00
(e)	Hot Water heaters	1200.00
(f)	Circulating Pumps	350.00
(g)	Horse tanks and pumps	1000.00
(h)	Refrigerating plant	5000.00
(i)	Excavate for refrigerating plant, repairing floors, etc.	1500.00
(j)	General expenses, painting, insulating, etc.	1000.00

37. Total 20850.00

Note that due to the low basement heights in the Lincoln Park Manor, it will be necessary to excavate to in-

stall the mechanical equipment. The new chimney of steel must be supported independently. We would locate it in the Court at the West of the building, alongside and tied into a wall portion between windows.

38.	Per Yr. Interest at 5%, amortization at 4.3% on investment, and supplies and maintenance at 5.7% on b, d, f, g, and h	$2,574.60
*39.	Per Yr. Fuel—4 gals oil per sq. ft. radiation @ .04¼	1,035.00
40.	Per Yr. Power for Fuel Burner, Compressor, etc. @ $ .0175	2,000.00
41.	Per Yr. Labor, 2 engineers at $400.00 per month	4,800.00
42.	Per Yr. Total cost per comparison	10,410.10
43.	Item 35, present Lincoln Park Manor cost per yr.	7,633.69
44.	Per Yr. Sum saved the tenants by purchasing from the Granada at prices developed in this report	2,776.41

*(Note that the actual Granada consumption is 4.4 gallons.)

Yours respectfully,
(Signed) Samuel R. Lewis

SRL:IH

684-5 Arlington

To visualize the cost to the tenants, in case they should elect to install and to operate their individual plants, we suggets the following as a fair tabulation:

36-A	Investment by Arlington.	
	(a) New Chimney and Supports	$ 5000.00
	(b) Boilers and piping	4000.00
	(c) Boiler pit and foundations	
	(d) Oil burners and tanks	1500.00
	(e) Hot Water heaters	1500.00
	(f) Circulating pumps	350.00
	(g) House tanks and pumps	1000.00
	(h) Refrigerating plant	5000.00
	(i) Excavation for refrigerating plant, repairing, floors, etc.	
	(j) General expenses, painting, insulating, etc.	1000.00
37-A	Total	$19,350.00

38-A	Per Yr. Interest at 5%, amortization at 4.3% on investment, and supplies and maintenance at 5.7% on b, d, f, g, and h.	$ 2,475.00
*39-A	Per Yr. Fuel—4 gals. oil per sq. ft. radiation @ .04¼	1,444.00
40-A	Power for fuel burner, compressor, etc. @ $ .0175 per yr.	2,500.00
41-A	Per Yr. Labor, 2 engineers at $400 per month	4,800.00
42-A	Per Yr. Total cost for comparison	11,219.00
43-A	Item 34, Present Arlington cost	10,924.95
44-A	Per Yr. Sum saved the tenants by purchasing from the Granada at prices developed in this report	294.05

* (Note that the actual Granada consumption is 4.4 gals.)

Yours respectfully,
(Signed) Samuel R. Lewis.

SRL:IH

684-6 You ask for an estimate of the difference in costs, should the Lincoln Park Manor be separated from the Granada central plant.

There would result a saving to the Granada of the cost of the extra fireman during four months of the year, as it is possible to carry the Granada and Arlington heating load on one oil burning boiler, and eliminate the necessity of burning coal in the additional boiler. The entire mechanical plant would be used at lighter loads as follows:

Heating	19%
Water	23%
Refrigeration	23½%

The operating expenses should then be:

Heating:

1.	Investment cost of boilers, oil burners	$19,000.00
2.	Per Yr. Interest, depreciation, maintenance and supplies at a total of 15% on above	2,850.00
3.	Per Yr. Cost of oil	4,862.00
	Per Yr. Cost of coal	.....
4.	Per Yr. Power for Fuel Burner	37.60
5.	Per Yr. Cost of Ash Removal	.....
6.	Per Yr. Labor—12 mcs. at $410.00	4920.00
7.	Total annual cost of heating	$12,769.60

8.	This divided by 26000, the total number of sq. ft. of radiation in the Granada and Arlington, gives a unit cost per sq. ft. of radiation of		.49114
	The cost of heating the Granada and Arlington then becomes:		
9.	Granada .....17,500 sq. ft.	$8,594.92	
10.	Arlington ..... 8,500 sq. ft.	4,174.68	
11.	Total (Same as 7).....	12,769.60	
684-7			
Water:			
12.	Investment Cost of water pumps and water heaters in Granada.....	$ 9,230.00	
13.	Per Year interest, depreciation, supplies and maintenance on above at 15%.....	1,384.50	
14.	Per Yr. Cost of one-half of water purchases. (The other half is charged to refrigeration)	964.90	
15.	Per Yr. Cost of pumping water.....	1,590.05	
16.	Cost of heating water.....	1,510.76	
17.	Total annual cost of water.....	5,250.20	
18.	This divided by 195 the equivalent total number of water using units in the Granada and Arlington, gives the cost per unit of	26.9241	
19.	Per Yr. Cost to Granada—109 units....	2,934.73	
20.	Per Yr. Cost to Arlington—86 units....	2,315.47	
21.	Total—(same as 17).....	$ 5,250.20	
Refrigeration:			
22.	Investment cost of apparatus.....	$16,280.00	
23.	Per Yr. Interest, depreciation, supplies and maintenance on above at 15%.....	2,442.00	
24.	Cost of condensing water per yr.....	764.90	
25.	Cost of electricity for compressor and brine pumping	3,346.83	
26.	Total annual cost of refrigeration.....	$ 6,553.73	
27.	This divided by 173, the total number of refrigerating units in the Granada and Arlington, gives a cost per unit of.....	37.8828	
28.	Per Yr. Cost to Granada—96 units....	3,636.75	
29.	Per Yr. Cost to Arlington—77 units....	2,916.98	
30.	Total (Same as 26).....	$ 6,553.73	

684-8

Based on these figures the cost of the heating, water and refrigeration service to each of the two buildings is as follows:

31. Granada $15,166.40
Arlington 9,407.13

Yours respectfully,
(Signed) Samuel R. Lewis.

SRL:IH

685 CITY NATIONAL EXHIBIT 4.

Samuel R. Lewis
Consulting Mechanical Engineer
407 S. Dearborn St., Chicago
Telephone Wabash 6675

January 31, 1934

Mr. E. Hall,
Granada Hotel,
525 Arlington Place,
Chicago, Ill.

Dear Mr. Hall:

I have received your request that I develop a new allocation of costs between the Granada, the Arlington and the Lincoln Park Manor, based on certain suggested modifications of the set up and due to operating economies unforeseen in my report of August 1929. These changes are as follows:

a. Fuel, average cost for heating the buildings and for heating hot water, $7000.00 (3 year average $6843.79).
b. Electricity for oil burners, water pumping and refrigeration, $3878.00 (I estimated $6477.60).
c. Labor, $3500.00 (I estimated $5520.00).
d. Water, $1800.00 (The cost was $1986.76).
e. Repairs and maintenance, an allowance of $2500.00 (I estimated $2542.20).

I suggested an annual interest and amortization charge of 9.3% on the Granada investment of $44,600.00. This item seems to have been neglected in the suggested rearrangement by the Central Republic Trust Company except as a 20% addition to itself of the operating cost is offered. It seems to me that this 20% addition to the operating

cost is by no means a fair allowance to cover fixed charges. In a spirit of the utmost generosity the Granada might fairly forego all profit on the transaction, but the Arlington and the Lincoln Park Manor should more equitably assist the Granada in liquidating the extra investment which it made to serve them. There must be, also, some commensurate allowance for the many administrative services in engineering, which the Granada does furnish.

These items are affected by seasonal weather, rate of occupancy, price of fuel, etc., and a margin should be 686 included to cover such fluctuations.

Interest and amortization, $44600.00 @ 9.3%	$ 4147.80
Fuel (actual)	7000.00
Electricity (actual cost less deduction of unit cost of lights and elevators)	3878.00
Labor (actual)	3500.00
Water (actual)	2000.00
Repairs and maintenance (actual)	2500.00
Agreed annual cost	$23025.80
Suggested safety margin and overhead, 20%	4605.16
Total annual charge	$27630.96
Call it	$27631.00

I have analyzed carefully the suggested charge from allocation charges by cubic feet or by rooms in lieu of the much more logical allocation by square feet of radiation (which reflects the heat actually lost), by units of water-using equipment and by units of refrigeration.

The following tabulation visualizes the comparison by C. R. T. Co.

	1 Cu. Ft.	2 By Rooms	3 By Radiation	4 Fixtures	5 Iceboxes	6 Combinded 3, 4, & 5
Granada	51%	48%	54.5%	43%	42.5%	46.71%
Arlington	28%	31%	26.4%	34%	34 %	31.44%
Lincoln Park	21%	21%	19.1%	23%	23.5%	21.86%
	100%	100%	100%	100%	100%	100%

The rational allocation of the costs as per columns 3, 4 and 5 properly should be employed.

If the matter is one of negotiation, a quick comparison with the suggestion of the C. R. T. Co. will be at least interesting.

Arlington Lincoln Pk. $27631.00 x 31.44% = annual charge $8687.17

Manor 27631.00 x 21.86% = annual charge 6040.12

The weakness of this re-arrangement is that the Lincoln Park Manor now pays $6610.00, giving the Granada an extra profit, provided the cost of $27631.00 is correct, of $571.00 per year. Apparently this is an overcharge and should be adjusted in case the Arlington charge shall be reduced to $8687.00 annually.

687 You have asked me to suggest an equitable charge month by month. I believe that we may assume that monthly fluctuations in the water consumption and power will be too small to be worth considering. The fuel cost will be the main item of fluctuation. Suppose that water heating covers 25% of the annual fuel cost. Then $5250.00 represents approximately the item which will change with the season. Suppose we add $250.00 to this so as to be very liberal and call it $5500.00. The variable item, $5500.00, is 20% of the $27,631.00 annual cost. The remaining costs are then $22,131.00.

Based on standard experience tables of heating demand we can then set up a monthly charge as follows:

1 Month	2 Percentage of heating cost.	3 Heating cost	4 Other costs ÷ 12.	5 Total
January	21	1155	1844	2999
February	18	990	1844	2834
March	14	770	1844	2614
April	9	495	1845	2340
May	4	220	1844	2064
June			1844	1844
July			1844	1844
August			1845	1845
September			1844	1844
October	4	220	1844	2064
November	13	715	1844	2559
December	17	935	1845	2780
	100	5500	22131	27631

Based on these monthly costs the share per month of the Arlington 31.44% and the Lincoln Park Manor 21.86% would be as follows:

	Arlington	Lincoln Park Manor
January	$940	$655
February	890	620
March	826	578
April	737	515
May	650	455
June	578	400

688

July	578	400
August	578	400
September	578	400
October	650	454
November	807	554
December	875	609
	$8687	$6040

The Central Republic Trust Company argues that the rates from a Central heating system would be lower than those which the Granada proposes, and assumes that the Arlington could carry through a season at 500 lbs. of steam per square foot of radiation, including the steam required for heating the service water.

Six large hotels in Chicago averaged for the heating alone, over several years, a metered consumption of 582 lbs. of steam per square foot of radiation per season, not including hot water. One hotel, not included among these six, required 963 lbs. of steam per square foot of radiation per season. The assumption of 500 lbs. therefore, in a steam heated building not having automatic temperature control, is too low.

The water itself for the Arlington would cost 34% of the $2000.00 stipulated water bill or $680.00. The cost of heating part of it would be 34% of 25% of the total fuel cost—$600.00.

Refrigeration, however applied, means an investment charge for 77 local air or water cooled compressors or for

a central compressor. The refrigeration charge might be worked out as follows:

Fixed charge on Granada refrigerating plant x 34%	=	$ 830.00
Electricity 2/3 total power requirement x 34%	=	612.00
Service on refrigeration		250.00
		$1692.00

Then for the Arlington, granted a Chicago district heating system was present, the cost for heating, hot water, and refrigeration would develop as follows:

689 Heating—

8500 sq. ft. of radiation @ 582 lbs. per season—5947 M Lbs.

January	21%	1038 M lbs.	$.85	$ 882.30
February	18%	890	.85	756.50
March	14%	690	.85	586.50
April	9%	445	.85	378.25
May	4%	198	.90	178.20
October	4%	198	.90	178.20
November	13%	645	.85	548.25
December	17%	843	.85	716.55
		4947		$4224.75

Heating	$4224.75
Water	680.00
Heating water	600.00
Refrigeration	1692.00
	$7196.75
20% safety margin and overhead	1439.35
Total district station cost for Arlington	$8636.10

Thus the suggested new service charge to the Arlington by the Granada of $8687.00 per year when rechecked in the light of actual experience, including investment charges, is exceedingly close in line with the charges of the Illinois Maintenance Company.

Yours very truly,

Samuel R. Lewis
(Samuel R. Lewis)
Consulting Engineer.

SRL:K

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691-705

CITY NATIONAL EXHIBIT 5

HEATING, WATER AND REFRIGERATION COSTS

Occ. Gr.	Av.		Payroll	Elect.	Fuel Oil	Water	Mech. R. & M.	Total		Arlington Light	Granada Est. Light	Total Corrected cost to Granada	Actual cost of Arlington to Granada	Per M	Corr. to Accrual Basis
		1932 5 mos.	1,025.	3,136.26	2.891.92	1,598.34	294.61	8,946.13		1,022.	1,700.	7,246.13	2,180.	436.	436.
87	86	1933 12 "	2,458.11	7,066.96	6,892.86	1,949.22	519.02	18,886.17		2,539.72	4,200.	14,686.17	4,400.	367.	367.
90	91	1934 12 "	2,432.70	7,410.60	7,313.41	2,248.47	878.62	20,283.80		2,594.43	4,300.	15,983.80	4,700.	391.	391.
90	91	1935 12 "	2,460.	7,510.83	7,278.62	1,997.31	1,091.27	20,338.03		2,399.60	3,800.	16,538.03	4,960.	414.	414.
94	95	1936 12 "	2,460.	7,759.19	7,356.82 *1.	2,057.44	212.	19,845.45		2,427.77	4,000.	15,845.45	4,750. *1.	396.	396.
95	97	1937 4 "	823.50	2,372.16	4,556.67	625.19	36.24	8,413.76		873.63	1,450.	6,963.76	2,090.	518.	358.
		Total	11,659.31	35,256.	36,290.30	10,475.97	3,031.76	96,713.34		11,859.15	19,500.	77,263.34	23,080.		
		Ave. Year	2,450.	7,400. 4,100.	7,640.	2,200.	630.	20,350.		2,495.	4,100.	16,250.	4,850.		
		Corr.	2,450.	3,300.	7,640.	2,200.	630.	16,250.					4,850.		
		S. R. L. 1929	5,520.	6,477.60	9,602.	1,987.76	6,676.88	30,324.28	+20%				10,924.95		
		S. R. L. 1934	3,500.	3,878.	7,000.	2,000.	6,647.80	23,025.80	+20%				8,636.10		

Cost S. L.
Heat.....19,000
Water..... 9,230
Ref.....16,280

*Estimated cost of electricity for Granada, not including energy for heat, ref. and water.

*1. Fuel Oil is for 1st 4 mos. of 1937 and represents 60% of years requirements. Av. fuel per month thruout year is $610 or $183 to the Arlington. Ave. fuel per month for 4 mos. 1937 is $1,139 or $343 to the Arlington.

	Misc. Arlington	Granada	Lincoln P.M.	Total
Cube	576418.	1040350	434181	2050949
%	28%	51%	21%	100%
Rooms	128	211	81	420
%	30.30	50.5	19.5	100%
Radiation % (S.L.)	26.4	54.5	19.1	100%

S.R.L.=S.R. Lewis.

Rooms	Arlington		Granada		Lincoln P.M.	
Hotel	14	14	18	18	10	10
Pullmans	47	47	32	32	37	37
D.K.	20	40	30	60	5	10
3's	9	27	134	39	8	24
2's Pul.			13	26		
4/5			4/4	36		
	90	128	114	211	60	81

Ratio				
Arl.	90	36.05	128	30.5
Gra.	114	41.20	211	50.3
L.P.M.	60	22.75	81	19.2
	264	100	420	100

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766 CITY NATIONAL EXHIBIT 8.

42 apt
21—1 Rm
12—2 Rm
7—3 Rm
2—3 Rm 2 Bath
Lt 90-100 mo
Power 50-65 mo
Oil 140.00 mo
5000 Rad
Rep needed 20.00 mo
Water 15 mo
El. Lt. Bulbs 10.00 mo
Misc, Repr 20.00 mo

767 100 Rm Hotel
6000 Rad
Oil—1600-1800 yr
Coal 1000 yr
Lt 105.00
Water 12.00 mo
Repairs 20.00 mo

768–1 (Letterhead of Irving E. Brooke, Chicago)

September 21, 1937

Mr. I. L. Hertzman
Property Management Division
City National Bank
208 South La Salle Street
Chicago, Illinois

Dear Mr. Hertzman:

In accordance with your request, I visited the Granada, Arlington, and Lincoln Park Manor Hotels on Friday, September 17. Subsequent to my visit, my associate, Mr. W. F. Dolke, made a detailed count of the radiation in the Arlington Hotel and found a total of 7,038 square feet.

I made a very preliminary inspection of the present plant in the Granada building as well as a general inspection of the heating and piping system in the Arlington building.

Accompanying this letter is an estimate of the construction cost as well as the total cost of operation for a boiler plant and heating system for the water supply system and for a refrigerating system to provide these services for the Arlington Hotel.

I trust you will find that this will serve your purpose.

Yours very truly,
Irving E. Brooke,
Irving E. Brooke,
Consulting Engineer.

IEB:R
Enc.

768-2 A. Construction and Installation Costs
Heating System

1.	Boiler, Kewanee #383—10125 sq. ft.	$ 1600
2.	Freight and Installation	200
3.	Piping and Connections	785
4.	Stoker	1250
5.	Stoker Installation	150
6.	Foundations (stack, boilers, pumps, stokers)	130
7.	Stack 26″ diam. x 70′, steel	900
8.	Breeching	125
9.	Water Feeder	150
10.	Vacuum Pump	900
11.	Electric Wiring	100
12.	Covering and Insulation	130
13.	Building Changes	200
		6620
	Engineering	400
		7020
	Contingencies, 10%	702
		$ 7722

B. Operating Expense

B-1 Fixed Charges

1.	Interest on Investment	6%	
2.	Depreciation	6%	
3.	Insurance	1%	
4.	Taxes	1½%	
5.	Rental Value of Space	—	
		Say — 15%	$ 1158.30

B-2 Operating Charges

1.	Fuel	$ 1580.00
2.	Electric Current	80.00
3.	Ash Removal	75.00
4.	Repairs and Maintenance	200.00
5.	Labor and Attendance	300.00
	Total Cost of Operation	$ 3393.30

768–3 Water Supply System

1. Water Heater		$ 300
2. Circulating Pump		50
3. Piping and Connections		450
4. Two House Pumps		600
5. One Sump Pump		250
6. Foundations and Supports		150
7. Two Water Tanks		550
11. Electric Wiring		125
12. Covering and Insulation		175
13. Building Changes		100
Total		2750
Engineering		200
		2950
Contingencies, 10%		295
		$ 3245
1. Interest on Investment	6%	
2. Depreciation	6%	
3. Insurance	1%	
4. Taxes	1½%	
5. Rental Value of Space	—	
Say — 15%		$ 486.75
1. Water		225.00
2. Electric Current		125.00
3.		
4. Repairs and Maintenance		100.00
5. Labor and Attendance		50.00
Total Cost of Operation	—	$ 986.75

768–4 Refrigerating System

System complete with 10 H. P. Motor, and Compressor, and Cooler and Equipment— (Including Engineering and Contingencies)		$ 3500.00
1. Interest on Investment	6%	
2. Depreciation	6%	
3. Insurance	1%	
4. Taxes	1½%	
5. Rental Value of Space	—	
	Say — 15%	$ 525.00
1. Gas and Brine		50.00
2. Electric Current		200.00
3. Water		175.00
4. Repairs and Maintenance		50.00
5. Labor and Attendance		25.00
		$ 1025.00

Total—	
Heating System	$ 3393.30
Water Supply System	986.75
Refrigerating System	1025.00
	$ 5405.05

1130 CITY NATIONAL EXHIBIT "G."

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption 65811) * *

Transcript of Proceedings.

Before:

Hon. John P. Barnes, J.

May 15, 1937.

1132 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption 65811) * *

Transcript of Proceedings.

The following is a transcript of the proceedings in the above entitled cause before the Honorable John P. Barnes, one of the Judges of said Court, on Saturday, the 15th day of May, A. D. 1937, at 11:00 o'clock A. M.

Present:

Defrees, Buckingham, Jones & Hoffman, represented by Tracy Buckingham, Esq., and Vincent O'Brien, Esq., on behalf of Bondholders' Protective Committee.

Messrs. Mort D. & Frank Goldberg, represented by Mort D. Goldberg, Esq.; Vernon R. Loucks, Esq.; Frank E. McAllister, Esq.; J. R. Lasky, Esq.; Mr.
1133 Greenberg; Mr. Micon; L. T. Allen, Esq.; Paul W. Mitchell, Esq.

And thereupon the following proceedings were had herein:—

The Court: How long should this matter take, gentlemen?

Mr. Goldberg: On behalf of the petitioner, it should only take a few minutes. I cannot say, for the objectors.

Mr. Greenberg: It will take considerable time; over an hour.

Mr. Loucks: If the Court please, I think we may shorten this. I think the petition is defective on its face, and I have a question on that point that may shorten all of the testimony.

Mr. Goldberg: Your Honor, on behalf of the petitioner in this case, we filed a voluntary petition, the petitioner being the Directors of the Granada Apartments, Inc.

About two or three days before this petition was filed in this Court, and without our knowledge, an involuntary petition was filed in Danville.

Upon a hearing of an answer to that petition,
1134 Judge Lindley recommended that that petition be transferred to this Court, and, accordingly, it has been done.

The petition filed here bears the signatures of the Directors of the Corporation. Resolutions were duly pre-

pared and presented to me, and upon the authority of these resolutions I filed this petition.

Immediately after filing it I came to this Court, the following morning, and asked that an order be entered, approving the petition as having been filed in good faith.

At that time Mr. Loucks appeared and informed this Court that the Directors had no authority to vest any attorney with the right to prepare a petition, or to file it. At that time I did not know who Mr. Loucks represented, but I afterwards determined, and from such information that has been given to me, I don't believe he represents either a creditor or a petitioner or a stockholder.

Now I am prepared, your Honor,—unless the proof is waived,—to ask the Director, who is present in this Court this morning, and who attending a meeting for the
1135 purpose of having this petition filed, put on the stand and sworn, and ask him if he had the authority —I do not think anyone will question that, but, if it is questioned, I will be glad to prove it.

Mr. Loucks: If the Court please, that is not the point—

Mr. Goldberg: Well, it is the point to this extent, your Honor—unless you have an interest in these proceedings, I do not think you should be heard.

The Court: Whom do you represent?

Mr. Loucks: I represent, if the Court please, the Estate of Mr. Ingersoll. Mr. Ingersoll is a man who, before his death, made a deal with a man who is back of this petition, that is, the real party in interest, whereby he came up here and the old gentleman put up $17,000, with which he bought three-fourths, approximately, of the stock of this Corporation.

Now, it is contended at this time by this other party, that although he put up the money for it, that it was not his; that, in effect, it amounted to practically a loan, for which this other party was to have a year to pay him back, and work out some kind of a condition on this.

1136 We think the facts amply sustain that position.

I take it, that is a long question to go into, until this can be disposed of, and I think this can be disposed of very quickly on two points:

The first is that the petition is defective on its face, in two respects; it does not show that these officers who signed this are the Board of Directors.

Now, there are several cases I have here, and am prepared to read, and I will just take a moment, if your Honor cares for that, to show that the officers of a corpora-

tion have no presumptive authority to sign this kind of an authority.

I will state my second point, if your Honor please, and I am prepared to read authorities on both of them: The second point is that this petition does not comply with the law as set forth in the Manatee Sugar Company case, 75 Federal Second 284.

That case holds a petition of this kind must not only recite the jurisdictional facts, but it must recite the facts sufficient to show there is a reasonable possibility of a plan being submitted that will be accepted by the creditors.

Just a short statement by the Court in that case—

1137 The Court: Who wrote the opinion?

Mr. Loucks: Your Honor, I cannot answer that. I cannot answer that.

The Court holds that it does not have to show a plan of reorganization fully worked out and ready for immediate consideration, but it is essential to show that one may be forthcoming; and, the Court says there must be something in the plan,—it must show that there is a plan of reorganization set forth, or promise that one may be forthcoming.

The Court: Oh, well, that is something after the statute.

What is the case?

Mr. Loucks: Manatee Sugar Company versus Mack, 75 Federal Second, 284.

The Court: If there is any doubt about it, the petition must be filed in good faith, and "good faith" means something more than mere honesty of purpose; it may include the examination of the question of good faith, and include the question of whether there is a probability of a plan being proposed that is likely to be accepted. But, it don't have to show all of that, right on the face.

1138 What is it you say?

Mr. Loucks: 75th Federal. At 284 is the language of the Court—at Page 281.

The Court: Moore against—?

Mr. Loucks: No; Manatee Sugar Company *vs.* Mack, 275 Federal Second, at Page 285.

The Court: (Examining citation.) No. I think that opinion goes a very long ways: It adds something to the statute, unquestionably.

Mr. Loucks: Now, on the other point, I am not raising that merely to be captious or for the purpose of delay; but, the facts, as I understand it, are that these Directors sold

their stock in the Spring of last year, of 1936,—all sold their stock, and surrendered it, and surrendered their stock and handed in their resignations.

Those are facts which I have been informed—I have not been able to verify,—which I am informed is the fact, and I think we are entitled to have an allegation in this petition—I think the petition is defective in not showing that it was adopted by the resolution of the Board of Directors.

The Court: You represent a stockholder?

Mr. Loucks: Yes, your Honor. The facts are
1139 these: There has been a contest as to whether my man owns the stock or merely holds it as collateral. Our man during his lifetime,—an elderly gentleman,—came up here and made a deal with the party who is really back of this petition, and he put up about $17,000 and bought quite a few of the securities of the first, second issues of the first, second mortgage bonds, and three-quarters, three-fourths, approximately, of the stock, all of the common stock, and half of the preferred stock of the corporation.

It is contended now that he did not buy it;—that he did not acquire title to it; that he merely put up the money as a loan.

The Court: Where is this property now?

Mr. Goldberg: Mr. Ingersoll, the party who advanced the money, about six months—

The Court: No. Where is the property?

Mr. Goldberg: The Granada Hotel.

The Court: In the hands of a receiver?

Mr. Goldberg: No, the trustee under the mortgage is in actual possession; but, there was a receiver appointed over his right.

The Court: How long has he been in possession?

1140 Mr. Goldberg: He has been in possession, I would say, about eight or nine years—seven years; it has been some time; and, he is accounting to the bondholders. They have a decree in the State Court, your Honor; but, certain forces have been at work in this case to destroy the plan of reorganization, through State Court proceedings, although a final decree has been entered there; and, through a process of securing a judgment in the Municipal Court of Chicago on these bonds; on 3,000 of these bonds, secured a receiver in the Circuit Court.

The Court: Well, let me make an observation—

Mr. Goldberg: Yes, your Honor?

The Court: That property has been in difficulty for eight years?

Mr. Goldberg: It has, your Honor.

The Court: And, for two and a half years after the passing of 77B!

It is a disgrace to somebody!

It is a disgrace to somebody!

Mr. Greenberg: $28,500 set aside for taxes, has disappeared.

There was $50,000 set aside, as the records will 1141 show, to pay up chattel mortgages? That has disappeared.

No one seems to be able to account for where that money has gone to.

On top of that, they have put on a $75,000 second mortgage, which is being collected now, every month.

The Court: I do not know about that, but I can say to you, without any further investigation, that the fact that this property has stayed in trouble for eight years, and two and a half years after the passage of 77B, is a disgrace to somebody!

Mr. Lasky: I might say, your Honor, I tried to put them in 77, two years ago, and they took me to the Supreme Court and knocked it out on the ground—at that time it was before Judge Lindley; that was the case of Tuttle *vs.* Morris.

Mr. O'Brien: If the Court please, I represent the Committee.

The Court: How many bonds?

Mr. O'Brien: Oh, I should say about two-thirds of them.

The Court: Well, your Committee can take to heart what I say. Put on your witnesses.

Your Committee can take to heart what I say.

1142 Mr. O'Brien: Better wait until this is finished, and then we can get at that?

Mr. Lasky: I take it the testimony about to be adduced, is going to the question of good faith, and it should show us the circumstances that have existed for so many years; I should like to ask this Court, if he will, to look to the question that was disposed of at our last hearing,—of what this proceeding should be. I offer that suggestion, for I believe the testimony—

The Court: What?

Mr. Lasky: We have had two involuntary petitions in Danville, and one voluntary one up here, filed subsequently; and your Honor, at our hearing Monday, disposed of the motion to transfer.

I am only asking that, as we go into this evidence, the

Court, seeing the ramifications, will bear in mind the question of the motion to transfer back to Danville.

The Court: Why?

Mr. Lasky: Because of the investigation that was made throughout the years, down there.

The Court: I said to you it is a disgrace this case is in court!

It is going out now, one way or the other, and it is
1143 going out promptly.

Mr. Greenberg: Is it affirmative proof on the part of the petitioner, or the Answer?

The Court: Whoever has the burden should start.

GEORGE U. NICHOLS, called as a witness herein, having been first duly sworn, testified on oath as follows:

Direct Examination by Mr. Goldberg.

Q. Will you please state your name?
A. George U. Nichols.
Q. Your address?
A. 2407 Burling.
Q. Are you acquainted with the Granada Apartments, Inc.?
A. Yes.
Q. Are you one of the Directors of the Granada Apartments, an Illinois Corporation?
A. I am.
Q. How long have you served as Director?
A. I do not know just the number of years, but several years.
Q. Have you ever tendered your resignation as Director of this Corporation?
1144 A. No, sir.
Q. Are you a stockholder of this corporation?
A. Yes.
Q. Who are the other Directors of this Corporation, if you know?
A. R. W. Walters.
Q. Did he sign this petition?
A. Yes.
Q. And your name is also affixed to this petition, Mr. Nichols?
A. Yes, sir.
Q. And what other Directors are there?

A. Allen W. Brown, I believe.

Q. And did he affix his signature to the petition, as a Director?

A. Yes, sir.

Q. Are there any other Directors besides you three that are active, and who have not tendered resignations?

A. I believe not.

Q. Was a resolution duly adopted, pursuant to a meeting held for the purpose of authorizing the filing of this petition in this Court?

A. There was.

Q. Are you acquainted with the financial status of
1145 the corporation?

A. To some extent.

Q. What is the unpaid balance due on the first mortgage on this property, Mr. Nichols?

A. I could not tell you that offhand.

Q. Is there a junior mortgage, a secondary mortgage?

A. I believe not.

Q. Do you know whether or not taxes have been paid on this property, up to current billing?

A. I believe not.

Q. Who is now in possession of these premises, collecting the rents and managing the property?

A. The receiver.

Q. What is the name of that party?

A. I could not give you that.

Q. How long has the so-called receiver been in possession of the premises, collecting the rents and incomes?

A. A year or more.

Mr. Goldberg: All right. Take the witness.

Cross-Examination by Mr. Greenberg.

Q. How much stock do you own in this corporation?

1146 A. I have several parcels. I will have to figure it out.

Q. Do you know, without referring to any documents?

A. No.

Q. Do you know how much stock Mr. Walters owns?

A. No; not without referring to documents.

Q. And do you know how much stock Mr. Brown owns?

A. No.

Q. Do you know the names of any of the stockholders,

outside of these three? Do you know the names of any of the stockholders outside of yourself?

The Court: Was this loan put on there by that St. Louis bond house?

Mr. Greenberg: No, your Honor; it was put on right here, by the Cody Trust Company.

The Court: Is the President, Mr. Mateer, here?

Mr. Greenberg: He was President of them at one time.

Mr. O'Brien: No, Mr. Mateer was President one time, of the old corporation.

The loan was made jointly by the Chicago Trust Company and the Cody Trust.

The Court: Where are the bonds?

1147 Mr. O'Brien: They are held by the City National Bank and Trust Company, as depositary.

The Court: Go ahead.

Mr. Greenberg: Q. When were you elected a Director, sir?

A. I do not remember the exact date; some three or four years ago.

Q. Do you know when the first mortgage on this property was put on? The first mortgage?

A. Yes.

Q. When was that put on?

A. I could not tell you the date.

Q. How?

A. I could not tell you without referring—

Q. How much was it?

A. Well, I do not know, exactly.

Q. Do you know when the first, second mortgage was put on?

A. Yes; I knew when that was put on.

Q. How much was that?

A. I do not recall.

Q. Do you know when the second series of first, second mortgages were floated?

A. Yes; I knew it at that time.

Q. When were they floated?

1148 A. I could not tell you.

Q. By whom were they floated; what financial agency?

A. One of the banks.

Q. Well, don't you know that the first series mortgages totaled about $595 000? Do you know that?

A. No, I do not.

Q. Do you know that the second series mortgages totaled $885,000?

A. Near that.

Q. What happened to the increase of the $300,000?

A. I could not tell you.

Q. Do you know where that money went to?

A. No.

Q. Were you a Director at that time?

A. I was.

Q. Well, don't you know what happened to that money?

A. No, sir.

Q. Was it disbursed by resolution of the Board of Directors?

A. I could not tell you that.

Q. Wasn't it just used to build the Arlington, the other buildings that are interested in this picture, or a part of this picture?

1149 A. No, sir.

Q. Well, there is a part of this picture, other buildings,—is there not?

A. There are three sections.

Q. Yes; one of them is called what? The Arlington? Is that right?

A. The Arlington.

Q. Light, heat and telephone service is furnished there, from the Granada, is it?

A. Yes.

Q. What is the other section?

A. Lincoln Park Manor.

Q. And the same arrangement there?

A. Yes.

Q. What is the third section?

A. The Granada.

Q. Now, who made that arrangement; do you know?

A. What do you mean?

Q. Who made the arrangements to furnish the light, heat and telephone service for the properties you have just mentioned?

A. Why, the Granada Building.

Q. Were you on the Board of Directors at that time?

A. Yes.

1150 Q. Now, what is the compensation paid by those other units to the Granada for that purpose, do you know?

A. I could not tell you that detail.

Q. Have you the corporate records?

A. (No answer.)
Q. Have you the corporate records?
A. No.
Q. Who has them?
A. Well, I don't know.
Q. Where have they been kept for the last year, or two or three?
A. That I do not know.
Q. Do you know anything at all about the manner in which the other buildings were built and furnished?
A. I knew it at the time.
Q. You were a Director at the Arlington, weren't you?
A. No.
Q. Weren't you a Director, at that time?
A. Not of the Arlington.
Q. Were you a Director of any of the other properties?
A. The Granada.
1151 Q. And that is the only one? That was the first unit built, wasn't it?
A. The first unit.
Q. Yes. Now, then, how was the building financed, with reference to the furnishing of the property for use, —the furniture: Who paid for that?
A. The Granada.
Q. How did they pay for it? Do you know the method?
A. They took a mortgage.
Q. Yes. Albert Pick & Company?
A. Yes.
Q. Was Albert Pick & Company paid up, or did they litigate that question?
A. That is in litigation.
Q. All right. Will you tell the Court, then, how it was that you borrowed $75,000 and gave a chattel mortgage upon the furnishings in the Granada,—how that was done?
A. I cannot remember why.
Q. You were a Director then, weren't you?
A. Yes.
Q. Do you remember any of the details?
A. I do not remember the details. I know that—
Q. Have you lost your memory, Mr. Nichols?
1152 A. Well, it depends.
Q. I see. What happened to the $50,000 that the Granada set aside in cash to meet the Albert Pick claim? Do you know where that went to?
A. No.
Q. Can you account to the Court for that money?

A. No.
Q. You were a Director then, weren't you?
A. Yes, sir.
Q. How is this $75,000 being paid?
A. I do not know that.
Q. Are you a Director now?
A. Yes.
Q. Do you have any knowledge at all about what is being done with the company's property?
A. Well, I know something.
Q. Well, tell it to the Court, if you know anything; please let us hear it.
A. I know it is in the hands of a receiver.
Q. Is that all you know? Is that all you know?
A. Well, I won't say it is all. What particular do you want?
Q. How often do you meet as a Board of Directors?
A. As time would call.
Q. How often have you been called, in the last
1153 year?
A. Two or three times.
Q. When was the first time?
A. I have not got that data.
Q. Well, what was the purpose of the meeting, the first time?
A. I do not know what was—
Q. When was the second call?
A. (No answer.)
Q. And, when was the second meeting?
A. I have not the dates with me.
Q. When was the third call?
A. The same answer.
Q. How?
A. The same answer.
Q. Did you have any other calls besides the first three calls that you mentioned, the last year?
A. No; I think that concluded it.
Q. That was all? Do you remember what resolutions you passed, and the purpose of the meetings, of the second and third calls, as well as the first?
A. Not at this time.
Q. No, you don't. What properties does the Granada own?
A. The property where the building is built.
1154 Q. And, what others?
A. Facing Arlington.

Q. Yes?
A. Along the alley, a diagonal alley just west, immediately west of Clark Street.
Q. Do you own that property?
A. Yes.
Q. What is the name of that one?
A. The Granada Apartments, Inc.
Q. I asked you what other property this company owns.
A. The Fullerton.
Q. Fullerton Plaza?
A. No, not the Fullerton Plaza.
Q. The Fullerton Building Corporation?
A. A building corporation immediately to the south, facing Fullerton.
Q. Yes. Now, what else does it own?
A. The building across the street on Arlington.
Q. What is the name of that? The Arlington?
A. The Arlington.
Q. Now, what else does it own?
Mr. O'Brien: If the Court please, I object to this testimony: The witness is not qualified, apparently, to state what the Corporation owns.
1155 Mr. Greenberg: He is a Director; he ought to know what the Company is doing.
Mr. O'Brien: I do not want to interrupt, but if you want the facts on that, there is a way of showing who owns it.
Mr. Greenberg: I am asking this man. He has a right to state what he knows and sees and hears.
The Court: Let him answer.
Mr. Greenberg: Q. What else does this Company own?
A. No other buildings in Chicago.
Q. All right. It owns property in other cities, does it not?
Mr. O'Brien: I still note the objection, your Honor, as not being any way to prove ownership of these things.
Mr. Greenberg: Those are very material things, your Honor, and this man knows it; and, I am objecting to Mr. O'Brien interrupting.
The Court: Proceed; tell us what you know about it.
The Witness: I do not know what you allude to.
Mr. Greenberg: Q. What about property in Kansas City; what properties do they own there?
A. I think the present status is that they own
1156 nothing.

Q. When did they dispose of the property in Kansas City,—this Company?

A. I do not believe it was an act of this Company. It was an act of foreclosure.

Q. You owned it at one time, didn't you? This Company owned that property in Kansas City? Now, tell the Court what sort of property it was.

A. The Kansas City property meant some apartment buildings in Kansas City.

Q. And, what else? A lot of duplexes, weren't they; a lot of vacant property, wasn't there?

A. There was some vacant property.

Q. Wasn't there some hotel property?

A. Yes.

Q. Now, when did they lose their rights in that property?

A. That I could not tell.

Q. How did they lose it?

A. Foreclosure.

Q. How do you know that?

A. Well, I was not served with any papers on it, so it is not of my own knowledge.

Q. From whom did you gain that knowledge?

A. Why, meeting with people.

1157 Q. What people did you meet with?

A. The stockholders.

Q. When did you meet with the stockholders last, Mr. Nichols?

A. I have not any memorandum with me.

Q. How long ago was it that you met with the stockholders of this Corporation, for any purpose?

A. It is a couple of months.

Q. Yes. Who was present, now; who were the stockholders you met with? Let us have their names, please.

A. Mr. Walters.

Q. Mr. Walters; how much has he got? How much stock does he own?

A. I do not know. The records will show.

Q. Well, all right. Who else was there?

A. And Mr. Brown.

Q. Who else?

A. Mr. Buck.

Q. Wasn't Mr. Wenstrand there?

A. No.

Q. Hasn't he any stock in this company?

A. Better ask him.

Q. I am asking you: Do you know?
A. I do not know.
1158 Q. Do you know whether or not the old gentleman who died, Mr. Ingersoll, was a stockholder?
The Court: This petition now on hearing; is that of the Granada Apartment?
Who is objecting to the approval of that?
Mr. Greenberg: We all are, Judge.
The Court: Well, will somebody tell me who, and whom he represents?
Mr. Micon: I am representing—
The Court: You represent whom?
Mr. Micon: A judgment creditor.
The Court: What is the amount of the judgment?
Mr. Micon: $4100
The Court: Your claim is that amount of bonds?
Mr. Micon: Yes. This judgment was obtained on certain bonds,—I mean certain bonds, first mortgage bond issue.
The Court: But, you do not have any lien ahead of the bonds?
Mr. Micon: I do not claim that.
The Court: Well, who else is opposing—will you state your names for the record?
Mr. Lasky: J. R. Lasky, I am associated in this case with Walter T. Gunn of Danville, and with Gilbert Wagner of this city.
1159 The Court: Whom do you represent?
Mr. Lasky: We represent bondholders.
The Court: Do you represent petitioners—?
Mr. Lasky: In Danville; that is correct.
The Court: —in those two proceedings in Danville?
Mr. Lasky: That is correct.
Mr. O'Brien: No; that is not right—
Mr. Lasky: We filed the latest involuntary petition in Danville.
Mr. O'Brien: The second petitioners.
The Court: You represent the petitioners in 20038?
Mr. Lasky: There are four bondholders there, your Honor: Gordon, Rose, Harris and Greenberg, of New York.
Mr. Goldberg: May I suggest to your Honor, the creditors in the second petition at Danville are the same creditors as in the first?
Mr. Lasky: That is very true, your Honor. The reason—
The Court: Just a minute. Who else?

Mr. Loucks: Vernon R. Loucks; at the time being I am opposing it, until I can find out more about this.

1160 I represent the Estate of S. A. Ingersoll, who claims all of the common stock of the Corporation and approximately half of the preferred stock and a certain number of those first mortgage bonds and second mortgage securities.

The Court: About how many first mortgage bonds?

Mr. Loucks: Not a large number, if the Court please.

The Court: Well, how many?

Mr. Loucks: About thirty or forty thousand of first mortgage bonds, and about a hundred thousand second mortgage bonds.

Our claim of ownership is contested. I want to say that.

The Court: Who else?

Mr. Allen: L. T. Allen, Danville, Illinois; I represent 3,000, for Mrs. Newman, and 4500 for Elmer Anderson of bonds.

David H. Greenberg; I am associated with him.

Mr. Mitchell: Paul M. Mitchell; I am appearing here today on behalf of Gilbert F. Wagner, who is out of town, in Texas. And, Mr. Wagner is associated with counsel for involuntary petitioning creditors in Danville.

1161 Mr. McAllister: Frank E. McAllister. My interest is somewhat in unity with Mr. Lasky and Judge Allen here. I was the one who brought the first Granada Hotel Corporation case, and then the Granada Apartment.

The Court: You represent Sam Harris, J. Rose, and I. Gordon?

Mr. McAllister: Yes, your Honor.

The Court: Judge Allen: Whom do you represent?

Mr. Allen: Mrs. Florence Newman; Newman, a bondholder of $3,000; and, Elmer Anderson, 4500.

The Court: Mr. Greenberg, whom do you represent?

Mr. Greenberg: The same that he has mentioned.

I want to state to your Honor that Elmer Anderson also has $7,000 of the bonds of the Arlington, which we contend is a part and parcel of this property and whose title the particular corporation owns.

Mr. O'Brien: If the Court wants the facts on those matters, I will be glad to give them. I have a book full of them.

The Court: Who else is opposed to this petition?

Now, take this petition 65811.

Mr. Lasky: Mr. Gunn, Mr. Wagner and myself.

The Court: Who is opposed to the finding of that

1162 petition as filed in good faith?

Mr. Goldberg: I am—

The Court: Will you state your name?

Mr. Goldberg: Mort D. Goldberg, representing the Granada Apartments, Inc., the Debtor.

The Court: 65811.

Mr. Goldberg: On motion by our office that matter was removed to this Court, by Judge Lindley.

The Court: Who else is opposed?

Mr. Loucks: Vernon R. Loucks, representing the same parties. At this time, your Honor, I am.

The Court: Who else is opposed, to 3008-D? Anybody else?

Who is opposed to 2701-D?

Mr. O'Brien: I am, your Honor, and I have a motion pending to dismiss it.

The Court: And you represent the Bondholders' Committee?

Mr. O'Brien: Yes. There were two involuntary petitions filed some years ago; one of them against the old corporation, the Granada Hotel Corporation.

When it was discovered that that corporation, a long time before, had parted with the title to Granada Apartments, Inc., a similar petition was filed also at Danville against the new corporation.

1163

As your Honor may remember, we opposed both of those petitions.

The Court: I do not know about it. I have hundreds of them.

Mr. O'Brien: Yes, I know. Well, at any rate, you did have it, and the first case did go to the Supreme Court.

Our objections were to the jurisdiction, and were upheld.

That case was transferred to you at Chicago, and we dismissed it.

We filed a similar motion to dismiss the other case against the new corporation, filed on the same grounds and at the same time.

We made a motion to dismiss that at Danville.

The petitioners took leave to amend, claiming an act of bankruptcy.

We moved to dismiss the petition as amended, and that motion is pending and undisposed of, originally before Judge Lindley and now transferred before your Honor, assuming that all of these cases have been formally assigned here.

The Court: Your Committee does not oppose 3008-D?

1164 Mr. O'Brien: We have no grounds for opposing it. We did have grounds for opposing the others—there was no jurisdiction.

The Court: Who does oppose 3008-D?

Mr. Goldberg: Yes.

Mr. O'Brien: I am asking your Honor to rule on my petition to dismiss the old petition, but I am not opposing either of the others.

Mr. Loucks: On behalf of the Ingersolls, I am also opposing until I can learn more about the complicated situation.

Mr. Greenberg: In 3008-D, that matter was referred to a Special Referee at Danville; all the prior cases are referred to a Special Referee, and, he made a written return, finding that the filing was in good faith.

Mr. O'Brien: We just have not got the facts of this matter—

Mr. Greenberg: I wasn't there.

Mr. O'Brien: I know what happened. Here is the status, your Honor: In the petition—

The Court: 3018?

Mr. O'Brien: That is not even the right number.

Mr. Greenberg: 3008.

Mr. O'Brien: 3008 is the one recently filed at Dan-
1165 ville, apparently with the proper jurisdiction. I mean, as far as any complaint ever made, is concerned.

The Court: Yes?

Mr. O'Brien: But, I am talking about the old petition at Danville, and I have got a motion pending to dismiss that; and Judge Lindley never did approve it, and he would have dismissed it as a matter of course when the Granada case came on.

The Court: And, you represent three-fourths or two-thirds?

Mr. O'Brien: Yes, I do.

The Court: You do not object to 3018, the new one filed at Danville?

Mr. O'Brien: I have made no objection to that, or to the voluntary.

Mr. Goldberg: I have, your Honor; I filed proper objections in Danville, and they were brought up and argued, and the matter was transferred here.

The Court: Who else objects to 3018?

Mr. Loucks: I do, if your Honor please, on behalf of the Ingersolls,—at this time, until I know more about it.

The Court: Well, what is your specific objection?

1166 Mr. Loucks: My understanding is that the petition was filed down there,—I do not know enough about it; I understand it is filed by bondholders representing a very small interest in bonds.

Of course, I appreciate, under the decisions, that in itself is not sufficient.

The Court: The trouble in this case is nobody has been doing anything. I cannot blame anybody in particular, but we must get started.

Mr. Loucks: I have been trying to find out. I don't know enough about it. I may not object to any of it later.

Mr. O'Brien: You have had time to go into the books.

Mr. Loucks: Where can I find the books?

Mr. O'Brien: We want to get the thing reorganized. We were not able to do it in the old proceedings.

The Court: 3008-D and 65811, they are consolidated, and they are both approved. We will want to appoint a trustee. Bring in an order.

Mr. McAllister: May I move the old case be consolidated?

Mr. O'Brien: I ask the old case be dismissed, on

1167 my motion.

Mr. Goldberg: I have Judge Lindley's investigator in court, and he has made a report to Judge Lindley, and I think your Honor has a copy of it.

The Court: I have not seen it. What is in it? What does it say?

Mr. Goldberg: I have a copy of it here. It goes into the ramifications of this thing—

Mr. O'Brien: In connection with what does this come up?

The Court: What is it about?

Mr. Goldberg: There are so many things that have occurred in this thing, and there is so much misappropriation of funds—

The Court: Don't worry about that. I will find out.

Mr. Lasky: For some time the Debtor has been making verbal or written allegations, or both, that it only has one piece of property up in Chicago, and it develops there is property in other cities.

The Court: That would be a remarkable situation, if true.

Mr. Lasky: And I think, if I am properly advised, that may have been the reason for the transfer up here.

1168 The Court: There are all sorts of rumors.

Mr. Goldberg: I think proper petitions are filed

and they should be answered. If they are subject to concealment, there is a penalty for that.

Mr. O'Brien: Will your Honor rule on that first involuntary, first?

The Court: What is wrong with it?

Mr. O'Brien: It is no better than it ever was.

Mr. McAllister: It alleges an act of bankruptcy.

Mr. O'Brien: You may have to look at the amended petition and the motion to strike—an act of bankruptcy by a corporation which has not been in possession of its property for four years.

Mr. McAllister: Referee Grant, who heard the evidence on that, recommended it as having been filed in good faith. And then we asked to re-refer it, and it was denied.

The Court: I am going to dismiss that one. I have got two; that is enough.

Mr. Lasky: Which?

The Court: 65967 and 65811 are consolidated, and approved, and I will appoint a Trustee. You may prepare and present draft order. What should his bond be?

1169 Mr. O'Brien: Your Honor, you spoke of bringing in an order on that. I am somewhat interested in that phase of it. What do you have in mind as to an order?

The Court: Bring in an order.

Mr. O'Brien: I mean, what would be the substance of the order?

The Court: Bring in an order that would effectively do what I indicated, with provision for the appointment of a Trustee, and I am now asking for suggestions as to the amount of the bond.

Mr. O'Brien: I understand that, your Honor.

The Court: The petition is dismissed.

Mr. O'Brien: What are the powers of the Trustee?

The Court: Oh, I want him to have broad powers.

Mr. O'Brien: I am asking, because I am interested in the matter only insofar as the order might relate to the custody, with the mortgage on the property.

The Court: He will have to take custody.

Mr. O'Brien: On that, your Honor, I have here the special appearance of the trustee-in-possession, with a petition setting up the facts, which I would like to ask leave to file.

The Court: This says he is in possession under

1170 a mortgage, and has been there for more than four months.

Mr. O'Brien: Substantially so.
The Court: It may be filed.
Mr. .....: Did the Court consolidate 3008-D?
The Court: Yes.
Mr. Greenberg: We contend that this corporation owns others—
The Court: Oh, now, don't worry about that.
Mr. Greenberg: I suggest a hundred thousand dollars, because of the vast income from these various properties.
The Court: Set that up in a petition.
Mr. O'Brien: And swear to it.
Mr. .....: Fifteen or twenty thousand is sufficient here.
Mr. Greenberg: Let us leave it to your Honor's discretion.
The Court: Oh, no.
Mr. Greenberg: Let us put the Director on the stand; he ought to know something about the income of the property, and I will put Mr. Walters on the stand.
The Court: If we get 20,000 from him, I can in-
1171 crease it.
Mr. .....: Would that be temporary trustee, your Honor?
The Court: Yes. And, set the first meeting for the 22nd—today is the 15th; set the first meeting for the 11th of June.
Mr. O'Brien: If the Court please, I want to keep this record straight?
Mr. Greenberg: At what time?
The Court: Two o'clock.
Mr. O'Brien: You ask about the contents of this petition; one point, of course, raised by the petition, is the question—I do not know whether this is the time but we are doing it, of the summary jurisdiction of the Court to go into that question.
The Court: I see.
Mr. O'Brien: Of possession by the Trustee. Do we understand that you are going into that, now?
The Court: I am going to send that question upstairs again; so, get ready for an appeal, because I am going to take possession.
Mr. O'Brien: Well, the petition which I filed here, your Honor: It is conceded, may it be conceded that it correctly states the facts?
The Court: I do not know what may be conceded.

1172 Mr. O'Brien: If it is not, then I would like to be heard on that petition.

The Court: How do you want to be heard? You are going to say that the Trustee, having been in possession for more than four months, the mortgagee has a kind of title and you cannot get him out?

I do not think that is the law.

I am going to try to get him out.

Mr. Greenberg: May Judge Allen and I have leave to file our petitions?

The Court: This Court cannot function if somebody should stand out and say, "We do not like that kind of a petition."

If this Court cannot get control of that property and function, I want to find out about it.

Mr. O'Brien: I want your Honor to understand the Committee's views.

The Court: Your Committee ought to have this property out of this Court: I do not know who they are, but I am sure they should.

Mr. O'Brien: I think, your Honor, you know about those things as they arise; but, you do not know about them now; and, I do know.

The Court: I do know the 77B statute has been on the books for two and a half years. I know I have
1173 had many of those cases before me, and only have a few of those pending; and, this is one of them.

Mr. Greenberg: May I ask leave to file a petition, Judge Allen and I, intervening, to represent bondholders?

The Court: Yes; get it in quickly.

Mr. McAllister: Mr. Fred Meyers has been in this case during the two and one-half years of its pendency. He was the Trustee appointed by Judge Lindley, to investigate the whole picture.

The Court: I won't hear charges—I want to find out—I want somebody that I know.

Mr. McAllister: He has all of the information with reference to that.

The Court: He may give it to the Trustee.

Mr. McAllister: And, he made a report to Judge Lindley on it, on all of the ramifications of the property in this picture, all of the ramifications of the property in this picture.

Mr. O'Brien: I would not stress that report, if I were you, Mr. McAllister.

The Court: We are going into the question of possession, but I am going to test that fact.

If your Committee were acting with a desire to
1174 get this property out of court, it should be out.

Mr. O'Brien: Your Honor, every time I start to tell your Honor the Committee's position, somebody else speaks—

The Court: I am going to find out whether this Committee wants to get the property out of court.

Mr. O'Brien: It wants a plan, and it wants a plan properly, and it wants it out of court; but, during the time that is going on, all it wants is to maintain its rights of custody, and I am not speaking of the Committee in that sense, but of the Trustee.

The Court: I am not going to reorganize a property when somebody says, "You cannot get possession of the property, Judge, you have not any right to possession."

Now, if it is held I have no right to take possession of the property, do you know what I will do? I will tell you right now: I will vacate the order approving these petitions, and I will dismiss them, because here is one court that is not going to attempt to reorganize property of which it does not have control.

Mr. O'Brien: Your Honor, I understand the Court's position on that—

1175 The Court: The first thing I want to find out is whether this committee really wants this property out of court.

Mr. O'Brien: I do want to say to your Honor, on this point, that when it comes to the reorganization of a property, if there should be a plan and you should approve the plan, and it directs the issuance of securities—

The Court: You are not going to tell me, "If it suits us, we will approve it."

Mr. O'Brien: No, I am not, your Honor; no, no!

The Court: That is the reason I am going to have possession of the property, or the case goes out of court.

Mr. O'Brien: What I meant to say, your Honor—

The Court: I have not thought about this for two or three minutes, but I have thought about it for weeks and months.

Mr. O'Brien: The minute your new securities are issued, you have got control of it.

The Court: I have told you what my attitude is. Now, you can reverse that in one place only, that I know of.

Mr. McAllister: Your Honor, they could have come in at any time in the past two and a half years.

1176 Mr. O'Brien: No, no. On your suit?

Mr. McAllister: Yes.

Mr. O'Brien: That wasn't any good.

The Court: I want to find out whether the Committee really wants this out.

Mr. O'Brien: The petition stands approved, your Honor?

Mr. Goldberg: You called his bluff, Judge.

(Which were all the proceedings had and testimony offered or received on the hearing of the above entitled cause at the time and place aforesaid.)

1177c IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—65811) * *

TRANSCRIPT OF PROCEEDINGS.

The following is a transcript of the proceedings in the above entitled cause before the Honorable John P. Barnes, one of the Judges of said Court, on Monday, the 17th day of May, A. D. 1937, at 2:00 o'clock P. M.

Present:

Messrs. Defrees, Buckingham, Jones & Hoffman, Represented by Tracy Buckingham, Esq., on behalf of Bondholders' Protective Committee;

Messrs. Mort D. & Frank Goldberg, Represented by Frank Goldberg, Esq., on behalf of the Debtor;

David H. Greenberg, Esq., on behalf of Florence Newman;

J. R. Lasky, Esq., on behalf an Intervening Petitioner.

1177d And thereupon the following proceedings were had herein:—

Mr. Goldberg: I am presenting this Order, Judge, in the Granada matter (handing a document to the Clerk).

The Court: (Examining document.) Has anyone any observations to make?

Mr. Greenberg: I have read this over. I think, your Honor, it fully complies with what you intended to convey, Saturday. It covers the motions that were made in Danville, and it sets them out.

The Court: Who is Florence Newman?

Mr. Greenberg: A bondholder, whom Judge Allen of Danville represented Saturday. We ask leave to file that petition, and also an order—

The Court: I am not going to give you leave to intervene.

I am going to make an order, that you have notice of all motions and proceedings.

Mr. Greenberg: All right.

The Court: That David H. Greenberg and L. T. Allen have leave to file the appearance of Florence Newman, and that there be a rule that said Counsel have notice.

1177e Has anybody any observations to make about this order?

Have you all seen copies of it?

Mr. Goldberg: I have submitted copies, if the Court please, to the Attorney for the Trustee.

The Court: Does anybody have any objection to it?

Mr. Goldberg: I think it covers everything that was brought out Saturday.

The Court: I hear no objection of any kind. The record may so show.

Let us find out, here; whom do you represent?

Mr. Lasky: I represent the petitioning creditors in the involuntary petition filed in Danville, your Honor. My name is J. R. Lasky. I was here Saturday.

Mr. Greenberg: I represent Florence Newman, whose petition we just filed.

The Court: Which one? You represent whom?

Mr. Greenberg: Florence Newman.

The Court: You do not represent either of these petitions (indicating to counsel)?

Mr. Goldberg: No.

The Court: And, whom do you represent?

Mr. Goldberg: I represent the Debtor, the Granada Apartments; Mort D. & Frank Goldberg.

1177f Mr. Buckingham: We are here on the special appearance of the City National Bank and Trust Company of Chicago.

The Court: I call now for objections.

Mr. Goldberg: There is no objections to the order, your Honor, as far as we are concerned.

The Court: What day is this—the 17th?

Mr. Lasky: Yes, sir.

Mr. Greenberg: The 17th.

The Court: Now, I think I want to make some observa-

tions: In a great many cases I have allowed debtors to remain in possession in 77B cases; I have done that where I did not have any special reason for taking the property out of the hands of the Debtor, and where, for reasons of economy, it has seemed desirable to leave the property in the hands of the Debtor.

In this particular case, however, I am told that the property is in the possession of the City National Bank and Trust Company as Trustee under a mortgage; is that correct?

Mr. Goldberg: That is right.

Mr. Lasky: Correct, your Honor.

The Court: I am also told that this property has been in litigation for something like eight years,—al-
1177g though it is two and one-half years since the enactment of this Section, 77B.

I am also told that two-thirds of the first mortgage bonds are and have been in the hands of the Committee.

I cannot see any reason why this property should not have been gotten out of court before this.

I am also told that the Debtor has property scattered over the country, other than the building in question.

I do not know whether those charges are true, it would be remarkable if they were; but, it must be investigated, and they must be investigated by someone in whom the Court has confidence and on whom the Court can rely.

I am told that if I do not appoint a trustee, that, after I have confirmed a plan, if I do confirm a plan, that then the trustee under the mortgage will surrender possession. I am told, in effect, that I have not any jurisdiction to take the property out of the hands of the trustee under the mortgage; that I can go ahead and reorganize, but that I cannot take the property out of the hands of the trustee under the mortgage.

1177h Now, the situation is this: The Court either has the power to take the property out of the hands of the trustee under the mortgage now, or it never has that power, without the consent of the trustee. The result of that statement is that the trustee under that mortgage holds a veto over any action which the Court may take in respect to or as to the approval of the plan of reorganization.

This Court is not, unless it is compelled in some way,—legal way,—going to attempt to reorganize a property of which it does not have control; in other words, this Court is not going to allow any mortgage trustee, or any bondholders' committee, to say to the Court, "Your Honor, we

will acquiesce in any plan which you may approve, provided it is satisfactory to us."

This Court is not going to get into that position!

If it be the law that a mortgage trustee, or a bondholders' committee, can hold a veto power over this Court, and can say to this Court whether this Court can or cannot exercise jurisdiction over a particular piece of property, then, so far as those properties are concerned which are
1177i in the hands of the mortgage trustee, this Court is going to find that the petitions are not filed in good faith. That would be a very dangerous sort of jurisdiction for this Court to attempt to exercise, where some mortgage trustee, or some bondholders' Committee, who have allowed the property to remain in court for eight years, can say to this Court, "No, your Honor, we will not consent to that plan of reorganization and this jurisdiction which you have been attempting to exercise cannot be exercised unless you amend this plan in the way we think it should be amended."

I am not going to attempt to exercise that sort of jurisdiction; and, if it be the law that I cannot take this property out of the hands of the mortgage trustee, I state to you again, I am going to find that these petitions are not filed in good faith, and I am going to send this property back where it has been for eight years,—and where it will probably remain for the next eight years; but, that won't be the fault of this Court. We can get this property out of this Court in sixty days, if we try; but, I am not going to attempt to get it out unless I have control of it.

Mr. Goldberg: The Debtor is going to cooperate
1177j in every way with the Court.

The Court: I have appointed Mr. Weighstill Woods, who is an attorney of this Court; I am going to instruct him to see what other properties are owned by that corporation, other than the property in Chicago.

Mr. Goldberg: Winston Woods?

The Court: Weighstill Woods.

The Court: Whose reporter is this here?

The Reporter: I am here from Mr. Fuller's office.

The Court: And you are here for what attorneys?

The Reporter: For Mr. Buckingham, I believe.

The Court: Any objection to having this written up for the Debtor?

Mr. Buckingham: Not at all.

The Court: Have it written up for the Debtor, and furnish that to this man?

Mr. Buckingham: Yes, your Honor.

Mr. Goldberg: Incidentally, there was a certain transcript taken in Danville: Do you want that, too?
The Court: No. Have you the transcript?
Mr. Goldberg: Yes.
The Court: You can submit it to the Trustee.
Mr. Goldberg: Yes, sir.

1177k (Which were all the proceedings had in the above entitled cause at the time and place aforesaid.)

1281 CITY NATIONAL EXHIBIT O.

15583
VOB-MCC

State of Illinois, }
County of Cook. } ss.

In the Superior Court of Cook County in Chancery.

To the Honorable, the Judges of Said Court, in Chancery Sitting:

Your Petitioner, Central Republic Trust Company, a corporation, (formerly named Central Republic Bank and Trust Company) as Trustee under Trust Deed recorded in the Recorder's Office of Cook County, Illinois, as Document No. 10161996, respectfully represents unto Your Honors:

1. That it is Trustee under the first mortgage described in the bill of complaint herein as Document No. 10161996 and as such Trustee party to this proceeding as representative of the owners and holders of all of the unpaid bonds, coupons and indebtedness described in and secured by said indenture.

2. That the real estate and premises in said bill of complaint more particularly described, are situate at 525 Arlington Place, Chicago, Illinois, and are improved with a building containing approximately two hundred six (206) rooms and operating as a high-class modern apartment hotel, the apartments consisting of one (1), two (2), three (3) and four (4) rooms, all of which are furnished and the greater number of which are occupied by tenants and guests.

3. That International and Industrial Securities Corporation, as determined by the decree of this court heretofore entered herein, is the owner of and entitled to immediate possession of all of the Pick china and kitchen cases
1282 and all of the White In-a-Dor Beds in and about the improvement on said premises, and as well certain of

the carpeting and ozite in certain of the apartments and corridors of said improvement, all of which will more fully appear from the terms and provisions of said decree heretofore entered herein upon the intervening petition of said International and Industrial Securities Corporation.

4. That the said improvement on said premises is specially designed solely for use as a furnished apartment hotel, consisting of Pullman and dining kitchen apartments, and that the said property, the title to which is vested in International and Industrial Securities Corporation, as aforesaid, is indispensable to the operation of said premises as a revenue producing property, and that your petitioner is informed and believes, and therefore represents the fact to be, that the said property could be replaced at a cost of not less than Eighteen Thousand Dollars ($18,000.) but that the removal of said property and the replacement thereof would not only injure and mar the improvement on said premises, but would result in the loss of most, if not all, of the tenants and guests now occupying said premises, and that your petitioner is informed and believes, and therefore represents the fact to be, that it would take two months or more in which to remove and to replace the said property.

5. That from the time of the filing of the said intervening petition of International and Industrial Securities Corporation the court reserved jurisdiction to determine the fair rental value of said property in the event that the said petitioner should successfully maintain its said petition,

and that from the time of the filing of said petition to
1283 this date a substantial sum has accrued to the said petitioner as rental for the use of its said property.

6. That on, to-wit, the 14th day of June, 1930, a decree was rendered by the Circuit Court of Cook County, Illinois, in cause therein numbered B-162869, in favor of Albert Pick & Company and against Granada Hotel Corporation, in the sum of Fifty-eight Thousand Seventy-nine Dollars and Forty-four Cents ($58,079.44); that your petitioner is informed and believes, and therefore states the fact to be, that thereafter Albert Pick & Company assigned the said decree to the said International and Industrial Securities Corporation, and that the latter company is now the owner thereof, and that the said decree remains wholly unpaid and unsatisfied; that by reason of its alleged claim under and by virtue of said decree, the said Albert Pick & Company filed in the Circuit Court of Cook County, Illinois, as cause No. B-210333, its bill of complaint against Granada

Hotel Corporation and others, praying, among other things, the appointment of a Receiver of and for the real estate and premises herein involved, and your petitioner avers that in the event of the discharge of the Receiver heretofore appointed herein and the appointment of a receiver in said Circuit Court cause last aforesaid, that your petitioner and the holders of the bonds and coupons described in and secured by its said trust deed and their rights and interests in the said premises would be prejudiced.

7. That the said International and Industrial Securities Corporation is ready and willing to compromise, settle and discharge all and each of its claims aforesaid, and to transfer title to the said property, vested in it as aforesaid, to satisfy the said decree in the sum of Fifty-eight Thousand Seventy-nine Dollars and Forty-four Cents ($58,1284 079.44), to dismiss the said proceedings pending as cause No. B-210333, as aforesaid, and to release and waive any and all claim for rental, as aforesaid, upon payment to it of the sum of Twenty-two Thousand Five Hundred Dollars ($22,500.), and that your petitioner believes that it is to the best interests of all parties concerned that some settlement be made, and avers that the said property aforesaid, subject only to the prior claim of International and Industrial Securities Corporation, is part of the security intended to be effected by your petitioner's said trust deed.

8. That your petitioner was compelled to and did retain counsel to represent it in and about the defense to the intervening petition of International and Industrial Securities Corporation aforesaid, and in and about the settlement and disposition of said controversy, by reason of which it became liable to pay its counsel a reasonable fee for the service thus rendered, and that said counsel have rendered services of the reasonable value of Two Thousand Dollars ($2,000.) which amount your petitioner avers is secured by the lien of its said trust deed as so much additional indebtedness thereby secured, prior and superior to the lien of said Trust Deed as security for the payment of bonds and coupons.

9. That there has been set aside as an operating reserve out of the rents, issues, income and profits of and from said premises the sum of Thirteen Thousand Dollars ($13,000.) which is available for application to such settlement or for such disposition as the court may direct, and that your petitioner is informed and believes, and therefore represents the fact to be, that the difference of Eleven Thousand Five

Hundred Dollars ($11,500.) necessary to make up the settlement price of Twenty-two Thousand Five Hundred Dollars ($22,500.) and the sum of Two Thousand Dollars
1285 ($2,000) to reimburse your petitioner's counsel for such services can be provided through the issuance and disposition of Receiver's Certificate of Indebtedness in the principal sum of Eleven Thousand Five Hundred Dollars ($11,500.00) to be secured by a first and prior lien upon the said real estate and premises and the proceeds thereof (subject only to the lien of unpaid general and special taxes).

Wherefore, your petitioner prays the suggestion of the court in the premises and recommends the entry of an order

(a) authorizing and directing Chicago Title and Trust Company, Receiver herein, to execute Receiver's Certificate of Indebtedness payable to bearer, bearing date as at the date of issuance, in the principal sum of Eleven Thousand Five Hundred Dollars ($11,500), payable on or before thirty-six months (36) after date, with interest until paid at the rate of five per cent (5%) per annum, payable at maturity, said Certificate to be a lien on said real estate and premises, the rents, issues and profits thereof, and upon the proceeds of sale thereof (subject only to the lien of unpaid general and special taxes), but paramount and superior to the right, title, interest and lien of your Petitioner's trust deed and of each and every the parties to this proceeding;

(b) authorizing and directing Chicago Title and Trust Company, as such Receiver, upon the sale and disposition of said Certificate, to pay to International and Industrial Securities Corporation, the proceeds of such sale, together with Eleven Thousand Five Hundred Dollars ($11,500) of the funds so set aside upon said petitioner's executing and delivering release and waiver of any and all claim to the rent, as aforesaid, upon said petitioner's delivering to said Receiver proper satisfaction of the decree aforesaid in the sum of Fifty-eight Thousand Seventy-nine Dollars and Forty-four cents ($58,079.44) and upon the entry of
1286 proper order dismissing the said proceedings pending in the Circuit Court of Cook County, Illinois, as cause number B-210333, and upon execution and delivery by said petitioner to Central Republic Trust Company, as Trustee under said Document No. 10161996 of appropriate bill of sale selling, transferring and conveying the said property aforesaid title to which has been decreed to be vested in said International and Industrial Securities Corporation,

as aforesaid, and authorizing and directing said Receiver in such events to pay the balance of said sum of Thirteen Thousand Dollars ($13,000) to Central Republic Trust Company, as Trustee, under said Document 10161996 to reimburse it for the reasonable fees of its counsel as aforesaid.

Central Republic Trust Company,
a corporation, (formerly named
Central Republic Bank and Trust
Company) as Trustee under said
Document 10161996,

By .....

.....

Solicitors for said Petitioner.

State of Illinois, }
County of Cook. } ss.

..... being first duly sworn on oath deposes and says that he is the duly authorized agent in this behalf of Central Republic Trust Company, as Trustee, Petitioner herein; that he has read the above and foregoing Petition by his subscribed, knows the contents thereof, and that the same is true except as to those matters and things therein alleged to be averred upon information and belief, as to which matters and things he beleives them to be true.

.....

Subscribed and sworn to before
me this ..... day of July, 1933.

.....

Notary Public.

1288 CITY NATIONAL EXHIBIT P.

State of Illinois, } ss.
County of Cook. }

IN THE SUPERIOR COURT OF COOK COUNTY IN CHANCERY

William A. Thuma,
vs:
Granada Hotel Corporation, *et al.* } No. 519151

ORDER.

This matter coming on to be heard upon the petition of Central Republic Trust Company, as Trustee under trust deed recorded in the Recorder's Office of Cook County, Illinois as Document 10161996, today filed herein, praying for an order authorizing and directing Chicago Title and Trust Company, Receiver herein, to purchase certain property owned by International & Industrial Securities Corporation, and for other relief,

It appearing to the court that due notice hereof has been given to all parties of record, the court being fully advised in the premises finds:

1. That it has jurisdiction of all of the parties to this cause and of the subject matter of this proceeding and of the said petition aforesaid.

2. That the real estate and premises involved in this cause are situate in the City of Chicago, County of Cook and State of Illinois, and described as follows:, to-wit:

Lots 32 and 33 of Out Lot "C" in Wrightwood a Subdivision of the South West quarter of Section 28, Township 40 North, Range 14, East of the 3rd P. M.

1289 3. That International & Industrial Securities Corporation is, as found in and by the decree heretofore entered in pursuance of its intervening petition herein, the owner of and entitled to immediate possession of the Pick kitchen and china cases, the White in-a-dor beds, and certain carpeting and ozite contained in the improvement on said real estate and premises, which said property is more particularly described in the said decree aforesaid, and that the said property is indispensable to the operation of the said premises as a revenue producing property.

4. That the said property, title to which is so vested in International & Industrial Securities Corporation, cannot be replaced for less than Eighteen Thousand Dollars ($18,000) and that it cannot be removed and replaced in less than two months' time and without loss of all or most of the tenants and guests now occupying the said premises.

5. That the said International & Industrial Securities Corporation is the assignee of Albert Pick & Company in whose favor there was rendered in the Circuit Court of Cook County, Illinois, on June 14, 1930, in cause there numbered B-162869, a decree in the sum of Fifty-eight Thousand Seventy-nine Dollars Forty-four Cents ($58,079.44) against Granada Hotel Corporation, and that it is the assignee of Albert Pick & Company, complainant in cause pending in the Circuit Court of Cook County, Illinois against Granada Hotel Corporation and others and there numbered B-210333.

6. That there is due to International & Industrial Securities Corporation a substantial sum on account of rental for its said property from the date of the filing of its intervening petition herein to the present time.

1290 7. That Central Republic Trust Company, as Trustee aforesaid, was compelled to, and did, retain counsel to defend it against the said intervening petition of International & Industrial Securities Corporation and that there is due it as and for the reasonable fees of its said counsel incurred in that regard the sum of Two Thousand Dollars ($2,000), which the court finds is so much additional indebtedness secured by the lien of its said trust deed prior and superior to the lien of said trust deed as security for the payment of bonds, coupons and other indebtedness.

8. That International & Industrial Securities Corporation is ready and willing to accept Twenty-two Thousand Five Hundred Dollars ($22,500) in cash in payment for the property aforesaid, and upon payment of that sum, to execute and deliver to said Central Republic Trust Company, as Trustee aforesaid, its bill of sale transferring, selling and setting over unto said Trustee the property owned by it as aforesaid, and to satisfy the said decree in the sum of Fifty-eight Thousand Seventy-nine Dollars Forty-four Cents ($58,079.44), to waive and to release any and all claim on account of rent, and to dismiss the said proceedings pending in the Circuit Court as aforesaid as cause numbered B-210333.

9. That there is available for the purposes of said settlement and for the payment of said petitioner's solicitors' fees out of the rents, issues, income and profits collected of and from the said real estate and premises the sum of Thirteen Thousand Dollars ($13,000), and that the balance of the funds necessary to effect the said settlement can be procured through the issuance of receiver's certificate of indebtedness, and that it is to the best interests of all parties concerned that the said settlement be made and that the petitioner's said solicitors' fees be paid.

1291 Now, Therefore, It Is Ordered that said Chicago Title and Trust Company, Receiver herein, be, and it is hereby, authorized and directed to issue its receiver's certificate of indebtedness as follows:

"Receiver's Certificate of Indebtedness
Chicago Title and Trust Company,
Receiver.

$11,500.00 August ....., 1933.

On or before thirty-six (36) months after date, for value received, Chicago Title And Trust Company, a corporation, not individually but as receiver, appointed by virtue of order of the Superior Court of Cook County, Illinois, in cause there pending entitled William A. Thuma *vs.* Granada Hotel Corporation, *et al.*, and numbered 519-151, of and for the real estate and premises situated in the City of Chicago, County of Cook and State of Illinois, described as follows, to-wit:

Lots Thirty-two (32) and Thirty-three (33) of Out Lot "C" in Wrightwood, a Subdivision of the Southwest Quarter of Section 28, Township 40 North, Range 14 East of the 3rd P. M.

promises to pay to the order of Indemnity Insurance Company of North America, a corporation, Eleven Thousand Five Hundred Dollars, with interest at 5% per annum payable at maturity.

This certificate is issued under and by virtue of an order of the Superior Court of Cook County, Illinois, entered on the ..... day of August, A. D. 1933, in said cause and subsisting first and prior lien upon said real estate and premises hereinabove described and upon the proceeds of any sale thereof (subject only to the lien of unpaid general taxes), and upon the rents, issues, income and profits of and from said property as to such rents,

issues, income and profits however subject to the prior lien of Central Republic Trust Company, as Trustee under trust deed recorded in the Recorder's office of Cook County, Illinois, as Document 10161996 to the extent of $8500.00 of the first rents collected by said receiver and available for distribution over and above rents required to be applied by said receiver to unpaid taxes, and such lien subject only to the exceptions above noted is prior and superior to the right, title, interest and lien in, to or upon said premises of each and every the parties to said cause whether parties complainant, cross complainant, defendant or cross defendant or otherwise.

This certificate shall likewise constitute a lien upon any interest which Central Republic Trust Company, as Trustee under said document No. 10161996, has or may hereafter during the pendency of this suit acquire in and to any or all furniture, furnishings, equipment and other personal property in and about the improvement on said real estate and premises, which said lien shall be prior and superior to the right, title, interest or lien in, to or upon said personal property of each and every the said parties to this proceeding.

1292 If said property, real or personal, is purchased at any foreclosure sale pursuant to a plan of reorganization or readjustment involving said property, every holder of this certificate, by the acceptance hereof, agrees, upon request of any one thereunto authorized pursuant to said plan, to accept in lieu hereof a note for the unpaid principal hereof and interest accrued hereon issued by any one who shall have acquired a Master's Certificate issued pursuant to such sale, or who shall have acquired title to said property in pursuance of such plan, which note shall be secured by a lien on said property or shall be secured by a lien on such Master's Certificate, and on said personal property, if any, which lien in either event shall be subject only to the lien of unpaid general taxes and special assessments (and, in the case of said personal property, if any, subject only to the lien of chattel mortgage recorded in the recorder's office of Cook County, Illinois, as Document number .....), and which note shall be payable on or before four (4) years from the date of this certificate and shall bear interest at the same rate as this Receiver's Certificate of Indebtedness payable at the maturity of said note.

No assignment of this certificate shall be effective for

any purpose without prior written notice thereof by the assignor to the said receiver or its successor.

This certificate is executed by Chicago Title & Trust Company, not personally, but as receiver aforesaid, in the exercise of the power and authority conferred upon it as such receiver, and is payable only out of the properties specifically described in this receiver's certificate.

No personal liability shall be asserted or be enforcible against the Chicago Title & Trust Company, because of, or in respect to this Receiver's Certificate or the making, issue or transfer thereof, and each original and successive holder of this Receiver's Certificate accepts the same upon the conditions herein above described.

Chicago Title & Trust Company, not individually, but as Receiver in the cause entitled William A. Thuma *vs.* Granada Hotel Corporation, *et al.*, Superior Court No. 519151.

By _____"

It Is Further Ordered that said Receiver attempt to sell the said certificate of indebtedness, and that upon the sale thereof, the proceeds of such sale, together with the said sum of Thirteen Thousand Dollars ($13,000) available as aforesaid out of the rents, issues, income and profits, be paid Twenty-two Thousand Five Hundred Dollars ($22,500) to International & Industrial Securities Corporation, provided that said corporation shall first execute and deliver to said Receiver bill of sale, selling, transferring and setting over to Central Republic Trust Company, as Trustee under said Document 10161996, the said kitchen cases, china cases, in-a-dor beds, carpeting and ozite, to-
1293 gether with proper satisfaction piece pertaining to the said decree of Fifty-eight Thousand Seventy-nine Dollars Forty-four Cents ($58,079.44), and provided also that said International & Industrial Securities Corporation first dismiss the said cause No. B-210333 and release and waive any and all claim to rent for said property on account of the use thereof by said Receiver herein since the date of the filing of its said intervening petition, and that the balance of Two Thousand Dollars ($2,000) be paid to Central Republic Trust Company, as Trustee aforesaid, for the use and benefit of its said counsel on account of the services aforesaid.

It Is Further Ordered, Adjudged And Decreed that the said receiver's certificate of indebtedness when so issued

and delivered shall constitute a valid and subsisting lien upon said real estate and premises and the proceeds of sale thereof subject and interior only to the lien of unpaid general and special taxes, but prior and superior to the right, title, interest, claim or lien of each and every the parties to this proceeding.

It Is Further Ordered that the said certificate when so issued and delivered shall likewise constitute a valid and subsisting lien and charge upon the rents, issues, income and profits to be thereafter collected by said receiver during the pendency of this suit and during the full period of redemption allowed by law, which said lien as to rents, issues, income and profits however shall be subject to the prior lien of Central Republic Trust Company, as Trustee under trust deed recorded in the Recorder's office of Cook County, Illinois, as Document 10161996 to the extent of $8500.00 of the first rents collected by said receiver and available for distribution over and above rents required to be applied by said receiver to unpaid taxes.

It Is Further Ordered that said certificate when so issued and delivered shall likewise constitute a lien
1294 upon any interest which Central Republic Trust Company, as Trustee under said document 10161996, has or may hereafter during the pendency of this suit acquire in and to any or all furniture, furnishings, equipment and other personal property in and about the improvement on said real estate and premises, which said lien shall be prior and superior to the right, title, interest or lien in, to or upon said personal property of each and every the said parties to this proceeding.

Dated at Chicago, Illinois, this 11th day of August, 1933.

Enter:

Williams,
Judge.

1299 CITY NATIONAL EXHIBIT R.

State of Illinois, } ss.
County of Cook. }

IN THE SUPERIOR COURT OF COOK COUNTY.

William A. Thuma, *Complainant,* vs. Granada Hotel Corporation, et al., *Defendants.*	In Chancery. Bill. No. 519151. Cross-Bill.
Central Republic Trust Company, etc., *Cross-complainant,* vs. Granada Hotel Corporation, et al., *Cross-defendants.*	

ORDER.

This matter coming on to be heard upon the motion of cross-complainant, Central Republic Trust Company, as Trustee under Document 10161996, for the surrender to it as such Trustee by the Receiver herein of possession of the real estate and premises described in the cross-bill of complaint herein and of the personal property in said premises described in the supplement to the said cross-bill of complaint of Central Republic Trust Company as such Trustee, and upon stipulation of the parties hereto, including Indemnity Insurance Company of North America, the holder of the Receiver's certificate of indebtedness, which stipulation is now filed in open court;

It Is Ordered that Chicago Title and Trust Company, Receiver herein, forthwith surrender to Central Republic Trust Company, as Trustee under trust deed recorded in the Recorder's Office of Cook County, Illinois as Document 10161996, possession of the following described real estate and premises, to wit:

Lots Thirty-two (32) and Thirty-three (33) of Outlot "C" in Wrightwood, a Subdivision of the Southwest quarter of Section Twenty-eight (28), Township Forty (40) North, Range Fourteen (14), East of the Third Principal Meridian, in Cook County, Illinois,

and of the furniture, equipment, and personal property in and about said premises, including the personal property described in the cross-bill of complaint of Central Republic Trust Company, as Trustee aforesaid, as supplemented.

It Is Further Ordered that Chicago Title and Trust Company, Receiver, file its final report and account within thirty (30) days, and that upon the coming in and approval of said final report and account the funds in the possession of said Receiver, after deduction of its reasonable fees
1300 and those of its counsel to be fixed by the court, be paid by the Receiver as follows: Twenty-five Hundred Dollars ($2500) to Central Republic Trust Company, as Trustee under said Document 10161996, and the balance towards the satisfaction of the certain Receiver's certificate of indebtedness issued to and held by Indemnity Insurance Company of North America under and pursuant to order entered herein on the 11th day of August, 1933, said certificate of indebtedness to be presented to the Receiver for endorsement thereon of such payment or credit.

It Is Further Ordered that Central Republic Trust Company, as Trustee under said Document 10161996, not individually but as such Trustee, assume liability for the payment of any balance remaining due under said Receiver's certificate of indebtedness after the application as aforesaid of such rents, issues, income, and profits, and that the said certificate remain a lien in pursuance of its terms and provisions and of said order of August 11, 1933 for the payment of such balance.

It Is Further Ordered that upon the coming in and approval of the Receiver's final report and account and upon payment as aforesaid by the Receiver of rents, issues, income, and profits to the said Trustee and in reduction of the amount due on account of said certificate, the said Receiver be discharged as such Receiver and of and from any and all liability on account of the Receiver's certificate of indebtedness aforesaid.

It Is Further Ordered that nothing herein contained shall be construed to impose upon Central Republic Trust Company, individually, any personal liability of any kind whatsoever for the payment out of its own funds of the said Receiver's certificate of indebtedness or any part thereof, but that in effect the said Trustee shall be, and it is, as such Trustee substituted for Chicago Title and Trust Company as Receiver in respect of the obligation to pay the balance so assumed and that the Trust property so ordered to be surrendered to said Trustee shall continue liable for

the payment of such balance in accordance with the terms, provisions, and conditions of said certificate of indebtedness.

Enter:

Harry A. Lewis.

Entered March 16, 1934.

To City National Bank and Trust Company of Chicago:

The above and foregoing is a true and correct copy of an order entered in the Superior Court of Cook County on the date indicated therein.

Dated September 29, 1936.

Defrees, Buckingham, Jones & Hoffman,

By.....

EXCERPTS FROM CITY NATIONAL EXHIBIT T.

1309 filed herein be and it is hereby in all respects approved.

And it appearing to the court that the law firm of Igoe and Flaherty, solicitors for William L. O'Connell, Receiver of Central Republic Trust Company, have performed legal services for and in connection with said trust estate for which they should be compensated out of said trust estate and that the reasonable value of such services is the sum of $150.00.

It Is Further Ordered that said William L. O'Connell, as Receiver of Central Republic Trust Company as aforesaid, be and he is hereby authorized and directed to pay to Messrs. Igoe and Flaherty the said sum of $150.00 and to deduct said sum from the total of $11,503.60 in his possession as such Receiver in connection with said trust as set forth in said final report and account and to deliver the balance of such funds in the amount of $11,353.60, together with the chattel mortgage note in the amount of $75,000, the chattel mortgage securing said note recorded in the Recorder's Office of Cook County, Illinois, as Document No. B-2702627 and the second mortgage bonds of Granada Hotel Corporation in the principal amount of $30,000, all as set forth in said final account, to City National Bank and Trust Company of Chicago, the successor Trustee heretofore appointed herein.

1310 It Is Hereby Further Ordered that upon the delivery of the balance of the funds in his possession to the successor Trustee as aforesaid, said William L.

O'Connell, individually and as Receiver of Central Republic Trust Company, and Central Republic Trust Company, be forever discharged from any and all liability under or in connection with said Trust Indentures or the administration of said trust.

It Is Further Ordered that the court reserves jurisdiction for the purpose of fixing and allowing fees for services rendered by Central Republic Trust Company as such Trustee and by William L. O'Connell as such Receiver and for the purpose of making provision for the payment of such fees and the moneys advanced and obligations incurred by said Central Republic Trust Company as such Trustee and by William L. O'Connell as such Receiver, together with costs and expenses of this proceeding including master's fees and the fees of their solicitors.

Dated: February 11, 1935.

Enter:

Lewis,
Judge.

1311 State of Illinois } ss.
County of Cook }

IN THE SUPERIOR COURT OF COOK COUNTY.

Central Republic Trust Company, a corporation, Trustee, *Complainant,*
vs.
Granada Hotel Corporation, *et al.*, *Defendants.*
} No. 519151.

FINAL ACCOUNT AND REPORT OF WILLIAM L. O'CONNELL, RECEIVER OF CENTRAL REPUBLIC TRUST COMPANY.

Pursuant to order of court heretofore entered, William L. O'Connell, as receiver of Central Republic Trust Company, trustee under trust indenture filed in the Recorder's Office of Cook County, Illinois, as Document No. 10161996, and under a supplemental trust indenture filed in the Recorder's Office of Cook County, Illinois, as Document No. 10161997, more fully described in the bill of complaint filed herein, hereby submits his final report and account of the moneys and properties in his hands as re-

ceiver of Central Republic Trust Company as trustee as aforesaid.

On or about March 22, 1934 Central Republic Trust Company, as trustee, went into possession of the premises mortgaged by said trust indenture and said indenture supplemental thereto, being the premises located at 535 Arlington Place, in the City of Chicago, Illinois, and thereafter operated said premises until January 3, 1935,
1312 the date upon which a successor trustee was appointed to succeed Central Republic Trust Company as trustee under said trust indenture and said indenture supplemental thereto. During said period the net cash receipts of said trustee from the operation of said premises were $13,974.89 and in addition thereto said trustee received the sum of $2,021.66 from other sources, making an aggregate of $16,996.55, total cash received by said trustee. There was disbursed by said trustee during said period the sum of $6,618.59, leaving a cash balance in the hands of William L. O'Connell, as receiver of Central Republic Trust Company as such trustee, of $10,377.96, as is more fully set forth in the itemized accounting marked Schedule "A" and attached hereto.

In addition to the funds in the possession of the trustee as hereinabove set forth William L. O'Connell as receiver of Central Republic Trust Company, as trustees as aforesaid, has in his possession cash in the following amounts:

$1,000.00 representing balance of cash on hand for payment of bonds Nos. 7 and 8 for $500.00 each maturing September 1, 1931 which have not as yet been presented for payment;

$61.94, balance of cash on hand for payment of accrued interest on bonds due September 1, 1931;

$21.00 representing the balance of cash on hand for payment of coupons due from March 1, 1930 to September 1, 1931 which have not as yet been presented for payment; and

$42.70 representing the balance of cash on hand to cover payment of 2% income tax liability on coupons on bonds secured by said trust indenture which have not as yet been presented for payment.

Said William L. O'Connell further reports that he has in his possession the following documents and securities belonging to said trust estates:

1313 1. Chattel mortgage note due September 2, 1933 for Seventy-five Thousand Dollars ($75,000.00).

2. Chattel Mortgage securing the above note recorded in the Recorder's Office of Cook County, Illinois, as Document No. B-2702627.

3. Granada Hotel Corporation second mortgage bonds due September 1, 1933 with March 1, 1930 and subsequent interest coupons attached in the amount of $30,000.00.

The above properties are held as collateral security for the indebtedness outstanding under the trust indenture and supplemental indenture hereinabove described.

Said William L. O'Connell, as receiver as aforesaid, further reports to the court that Central Republic Trust Company, as trustee, has heretofore instituted and conducted foreclosure proceedings upon the trust indenture and said indenture supplemental thereto and the chattel mortgage hereinabove described, which proceedings are now pending herein and that in the conduct of said litigation said trustee has performed various duties and rendered various services, for which it is entitled to be compensated and has incurred various obligations, all of which compensation and obligations under the provisions of said trust indenture and said indenture supplemental thereto and said chattel mortgage constitutes an indebtedness of the mortgagor for which Central Republic Trust Company as trustee and William L. O'Connell as its receiver have a first and prior lien upon the real estate, premises and chattel property described in said indentures and chattel mortgage and said William L. O'Connell as such receiver requests that reasonable fees for the services of Cen- 1314 tral Republic Trust Company as trustee be determined and fixed by this court and that such fees, together with its expenses and the reasonable fees and advances of its solicitors be included in the indebtedness of the mortgagor as may hereinafter be determined by decree and that it may be determined that William L. O'Connell, as receiver as aforesaid, and Central Republic Trust Company, as trustee, have a first and prior lien upon the real estate and premises described in said trust indentures and a first and prior lien upon the chattel property described in said chattel mortgage and on the proceeds of any sale of said mortgage premises which may hereafter be had herein.

William L. O'Connell, as receiver of Central Republic Trust Company, trustee as aforesaid, has employed Igoe and Flaherty as his solicitors and said solicitors have performed valuable services for him in connection with the administration of said trust for which services said

solicitors are entitled to reasonable fees, the payment of which should be provided for out of said trust estate, and there has been attached hereto a certificate of services rendered by said solicitors as aforesaid, and William L. O'Connell, as such Receiver, requests that the court may determine the reasonable value of such services and may authorize and direct him, as such receiver, to pay the same and deduct the amount thereof from the moneys in his hands as hereinabove set forth, and that the balance of the moneys in his hands, after the deduction of the fees of his said solicitors and said other properties hereinabove mentioned, be ordered paid and delivered to the successor trustee heretofore appointed herein.

1315 William L. O'Connell, as receiver of Central Republic Trust Company, as trustee as aforesaid, requests that this report and account be approved by the court and that an order be entered herein forever discharging him, individually and as receiver of Central Republic Trust Company, and Central Republic Trust Company from any and all liability as trustee under said indentures or in connection with the administration of said trust estate.

Respectfully submitted,
William L. O'Connell,
as receiver of Central Republic Trust Company.

By .....
His duly authorized agent.

State of Illinois } ss.
County of Cook }

Chas. H. Albers, being first duly sworn, on oath deposes and says that he is the duly authorized agent of William L. O'Connell, receiver of Central Republic Trust Company, and that the foregoing final account and report, by him subscribed, is a true and correct account of the moneys and securities in the possession of Willaim L. O'Connell, as receiver of Central Republic Trust Company as aforesaid.

.....

Subscribed and sworn to before me this ..... day of February, A. D. 1935.

.....
Notary Public.

1344 CITY NATIONAL EXHIBIT "U".

18134
1-5-34
VOB:NA

This Memorandum of Agreement made as of the 1st day of January, 1933 by and between Granada Apartments, Inc., and Warran-Hart Apartments Building Corporation, corporations organized and existing under and by virtue of the laws of the State of Illinois,

Witnesseth: That,

For and in consideration of the payment by Central Republic Trust Company, as Trustee under the first mortgage indenture on the property of Warren-Hart Apartments Building Corporation to Granada Apartments, Inc., of certain moneys deposited with Central Republic Trust Company, as Trustee, and for other good and valuable considerations, It Is Agreed by and between the parties hereto that the amount payable to Granada Apartments, Inc. by Warren-Hart Apartments Building Corporation for the year 1933 for service rendered it by Granada Apartments, Inc. in the furnishing of heat, refrigeration, hot and cold water, and mechanical maintenance shall not exceed Seventy-two Hundred Dollars ($7200), including any funds so made available as aforesaid by Central Republic Trust Company, as Trustee.

In Witness Whereof, the parties hereto have caused these presents to be executed by their respective ..... Presidents, attested by their respective ..... Secretaries, and their respective corporate seals to be hereunto affixed this 5th day of January, 1934.

Granada Apartments, Inc.,
By Roger W. Walters,
..... *President.*

Attest:
George U. Nichols,
..... *Secretary.*

Warren-Hart Apartments Building Corporation,
By Edward Hall,
..... *President.*

Attest:
Cecil Clark,
..... *Secretary.*

1487 CITY NATIONAL EXHIBIT W.

1488 The Arlington Hotel
530 West Arlington Place
Chicago

The purpose of this report is to determine the proper allocation of costs for services to the Arlington Hotel, from the total operating costs of the Granada Hotel for the same services, the Granada Hotel providing the service to the Arlington Hotel.

In the following estimates, the figures of plant costs—Boiler Plant $19,000.00, Refrigeration Plant $16,280.00, and Water Pumps, Heaters, Tanks, etc., $9,230.00—are taken from previous report made in 1929 by S. R. Lewis. The costs for labor, fuel, water, and electricity, are annual averages for the years 1933 to 1936 inclusive, and are from audited records.

The amounts of direct radiation surfaces for the respective buildings are from survey and supplemental survey made by Irving Brooke.

The number of ice boxes and plumbing outlets is taken from City National Bank records.

1489

SUMMARY OF PLANT OPERATING COSTS FOR GRANADA, ARLINGTON AND LINCOLN PARK MANOR.

Heating	$ 8,964.00
Refrigeration	8,413.00
Hot Water	3,235.00
Cold Water	1,761.00
	$ 22,373.00 total for three hotels

RECAPITULATION OF COSTS FOR SERVICES TO ARLINGTON HOTEL.

Month	Heating %	Heating Cost	Refrigeration	Hot Water	Cold Water	Total
January	20.0	$ 510.94	$ 238.38	$81.95	$44.61	$ 875.88
February	17.4	444.52	238.38	81.95	44.61	809.46
March	14.3	365.32	238.38	81.95	44.61	730.26
April	8.8	224.81	238.38	81.95	44.61	589.75
May	3.9	99.63	238.38	81.95	44.61	464.57
June	....	.....	238.38	81.95	44.61	364.94
July	....	.....	238.38	81.95	44.61	364.94
August	....	.....	238.38	81.95	44.61	364.94
September	....	.....	238.38	81.95	44.61	364.94
October	5.6	143.06	238.38	81.95	44.61	508.00
November	12.4	316.78	238.38	81.95	44.61	681.72
December	17.6	449.62	238.38	81.95	44.61	814.56
Total	100%	$2,554.68	$2,864.40	$983.45	$535.30	$6,933.96

To these charges to the Arlington Hotel, a profit of 10% could reasonably be charged = $635.30 average per month.

1490

SEGREGATION OF COST ITEMS

Labor

Labor for refrigeration	50% =	$1,230.00
Labor for heating	40% =	984.00
Labor for water services	10% =	246.00
		$2,460.00 total per year

Water

Water for refrigeration:
1.25 gallons per minute per ton for 30 tons = 2,250 gallons per hour.
Average daily operation of plant = 15½ hours.
For 365 days = 5,475 hours.
5,475 hours times 2,250 gallons = 12,318,000 gallons or 1,643,000 cubic feet.
1,643,000 cubic feet @ $ .50 per M- = $821.50.
Water for domestic hot water:

Total water used per year	4,120,000 cubic feet =	$2,060.00
Total water used for refrigeration	1,643,000 cubic feet =	821.50
For total domestic use	2,477,000 cubic feet	
For hot water use (estimated) 35%	867,000 cubic feet =	433.50
For cold water use (estimated) 65%	1,610,000 cubic feet =	805.00

Fuel

Fuel oil for water heating:
Fuel oil for heating 867,000 cubic feet of water from 50° average to 125°
75 B.T.U. plus (10% for radiation losses) 7.5 B.TU.. =82.5 B.T.U. added per lb.
Fuel oil having 150,000 B.T.U. per gallon = 112,500 B.T.U. at 75% burner and boiler efficiency for heating water.

$$\frac{867.000 \times 62.5 \times 82.5}{112,500} = 39,600 \text{ gallons @ \$ } .0475 = \$1,880.00$$

Total oil per year	= 151,700 gallons =	$7,210.00
For Hot Water	= 39,600 gallons =	1,880.00
For Heating	= 112,100 gallons =	5,330.00

1491

SEGREGATION OF COST ITEMS (Con't.)

Electrical

1 oil burner motor	1½ H.P.	17 hrs. per day	220 days	= 4,180 K.W. hr.
1 oil burner motor	1½ H.P.	10 hrs. per day	20 days	= 224 K.W. hr.
1 oil pump motor	½ H.P.	17 hrs. per day	220 days	= 1,386 K.W. hr.
1 vacuum pump motor	2 H.P.	6.5 hrs. per day	220 days	= 2,244 K.W. hr.
				8,034 K.W. hr.

at 90% load factor = 7,230 K.W. hr.

Electric current for refrigeration:

1 — 60 H.P. motor	15½ hrs.	per day	365 days	= 254,400 K.W. hr.
1 — 10 H.P. motor	24 hrs.	per day	365 days	= 65,260 K.W. hr.
				319,960 K.W. hr.

at 80% load factor = 255,700 K.W. hr.

Electric current for water heating:

1 — ½ H.P. oil pump motor	6 hrs.	per day	145 days	= 320 K.W. hr.
1 — ½ H.P. oil burner motor	6 hrs.	per day	365 days	= 810 K.W. hr.
1 — 3 H.P. pump motor	24 hrs.	per day	365 days	= 19,600 K.W. hr.
				20,730 K.W. hr.

at 80% load factor = 16,550 K.W. hr.

Electric current for cold water pumping:

1 — 15 H.P. pump motor 4 hrs. per day 365 days = 16,350 K.W. hr.
at 80% load factor = 13,000 K.W. hr.

Total K.W. Hr. for all Power	322,260 K.W. Hr. 1 year
For plant	292,480 K.W. Hr. 1 year
For elevator, laundry, etc.	29,780 K.W. Hr. 1 year

1492

Cost of Producing Steam for Heating—Per Annum

112,100 gallons fuel oil @ $ .0475	$ 5,330.00
Labor	984.00
7,230 K. W. hr. @ $ .016	115.00
Maintenance and repairs	350.00
Insurance and taxes—2½% on $19,000.00	475.00
Interest 6%, amortization 3%, on $19,000.00	1,710.00
	$ 8,964.00

Cost of Refrigeration Per Annum

Labor	$ 1,230.00
255,700 K. W. hr. @ $ .016	4,090.00
1,643,000 cu. ft. water @ $ .50 per M	821.00
Maintenance and repairs	400.00
Insurance and taxes—2½% on $16,280.00	407.00
Interest 6%, amortization 3%, on $16,280.00	1,465.00
	$8,413.00

Cost of Hot Water

Labor 5% of total	$ 123.00
Water 867,600 cu. ft. @ $ .50 per M	433.50
16,550 K. W. hrs. @ $ .016	264.00
39,600 gallons fuel oil @ $ .0475	1,880.00
Maintenance and repairs	50.00
Insurance and taxes—2½% on $4,230.00	105.00
Interest 6%, amortization 3%, on $4,230.00	380.00
	$ 3,235.00

Cost of Cold Water

Labor 5% of total	$ 123.00
Water 1,610,000 cu. ft. @ $ .50 per M	805.00
13,000 K. W. hrs. @ $ .016	208.00
Maintenance and repairs	50.00
Insurance and taxes—2½% on $5,000.00	125.00
Interest 6%, amortization 3%, on $5,000.00	450.00
	$ 1,761.00

1493

Proportion of Services Chargeable to Respective Hotels

Heating			$ 8,964.00
Granada	12,058 sq. ft. radiation	=49.1%	
Arlington	7,038 sq. ft. radiation	=28.5	=$ 2,554.70
Lincoln Park Manor	5,516 sq. ft. radiation	=22.4	
Refrigeration			$ 8,413.00
Granada	96 ice boxes	=42.4%	
Arlington	77 ice boxes	=34.0	=$ 2,860.40
Lincoln Park Manor	53 ice boxes	=23.6	
Hot Water			$ 3,233.00
Granada	615 plumbing outlets	=50.5%	
Arlington	370 plumbing outlets	=30.4	=$ 983.45
Lincoln Park Manor	233 plumbing outlets	=19.1	
Cold Water			$ 1,761.00
Granada	826 plumbing outlets	50.5%	
Arlington	498 plumbing outlets	30.4	=$ 535.30
Lincoln Park Manor	314 plumbing outlets	19.1	

Prepared by:
O. W. Dauber
O. W. Dauber,
Consulting Engineer,
224 So. Michigan Ave.,
Chicago, Illinois.

October 7, 1937.

1580 CITY NATIONAL EXHIBIT Z.

Memorandum of Agreement
Between
Arlington Apartment Building Corporation, an Illinois Corporation and Mateer Hotels, Inc., an Illinois Corporation.

Feb. 9, 1924.

This Agreement made and entered into this 9th day of February, A. D. 1924, by and between Arlington Apartment Building Corporation, a corporation duly authorized and existing under the laws of the State of Illinois, having its principal place of business at ..... Arlington Place, in the City of Chicago, in the County of Cook and State of Illinois, party of the first part, (herein sometimes referred to as "Arlington Corporation"), and Mateer Hotels, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, having its principal place of business at 525 Arlington

Place, in said City of Chicago, (herein sometimes referred to as "Mateer Corporation"), party of the second part, Witnesseth:

Whereas, Fred D. Mateer of Chicago, Illinois, (herein referred to as "Mateer"), owns all of the Capital Stock of Mateer Corporation (except Directors' qualifying shares), and owns substantially all of the common capital stock of Arlington Corporation and of Granada Hotel Corporation and Lincoln Park Manor Building Corporation, all Illinois corporations, which said Corporations are engaged in the construction, ownership and/or operation of hotels and/or apartment buildings located in said City of Chicago, on premises contiguous to or adjoining each other, and

Whereas, Mateer Corporation represents that it has made arrangements with said Granada Hotel Corporation and said Lincoln Park Manor Building Corporation whereby it is contemplated that Mateer Corporation will furnish heating, refrigeration, electric light and power, water, gas and telephone services jointly to Arlington Corporation, said Granada Hotel Corporation and said Lincoln Park Manor Building Corporation, (which said three corporations are hereinafter sometimes referred to as "Consumer Corporations"), through a single plant specially equipped for such services and controlled and operated by Mateer Corporation, and represents further that it is in a position to furnish economical and efficient service to Consumer Corporations through a joint arrangement to be evidenced by contracts to be presently entered into by Mateer Corporation with each of Consumer Corporations, and

Whereas, Arlington Corporation is engaged in the ownership and operation of an apartment hotel building (hereinafter sometimes referred to as "Arlington Building"), located upon the premises commonly known as 530-532 Arlington Place, the legal description of which said premises is as follows:

Lot 34 and the E. 11 Ft. of lot 35 in the Sub. of Out-lot "C" of Wrightwood, being a Sub. of the S. W. ¼ of Sec. 28, Township 40 N., Range 14, E. of the 2nd P. M., in the City of Chicago, County of Cook, State of Illinois.

nd is desirous of procuring heating, refrigeration, electric light and power, water, gas and telephone services from Mateer Corporation for use in the operation of Arlington Building.

Now, Therefore, in consideration of the premises and of the covenants and agreements herein contained, and of the sum of One Dollar ($1.00) paid by Arlington Corporation to Mateer Corporation, and for and upon other good and valuable considerations, the receipt and sufficiency whereof are hereby acknowledged, the parties hereto mutually agree as follows:

First: Mateer Corporation agrees to furnish to Arlington Corporation all heating, refrigeration, electric light and power, hot and cold water, gas and telephone services required by Arlington Corporation in connection with the operation and maintenance of Arlington Building. 1581 Such services are to be rendered by Mateer Corporation to Arlington Corporation for a period of thirteen years from and after February 9, 1924.

Second: Mateer Corporation is to be reimbursed by Arlington Corporation for a due proportion of the actual costs and expenses incurred by Mateer Corporation in furnishing the services hereinabove described, and in the operation of the plant and equipment required therefor, as hereinafter more fully provided, and is to receive from Arlington Corporation in addition thereto compensation for and on account of services rendered by Mateer Corporation in managing, supervising, operating, maintaining and financing such services, together with the machinery, equipment and supplies necessary therefor, such compensation to be based upon a percentage of certain of the costs to Mateer Corporation of joint services furnished by it, as hereinafter specifically provided.

Third: For and during the period(s) in which Mateer Corporation shall furnish heating service for Arlington Building hereunder, Arlington Corporation agrees to pay to Mateer Corporation a share of all expenses actually incurred by Mateer Corporation with respect to all heating service furnished by it to Consumer Corporation and others (including, without limiting the generality of the foregoing language, expenditure for fuel, rental of premises on which heating plant and equipment operated by Mateer Corporation are located, wages of employees engaged in heating service, cost of maintenance and repairs of machinery and equipment involved in heating service, and all other expenses incidental to such service), based upon the proportion which the number of square feet of radiation in use in Arlington Building at any time bears to the total number of square feet of radiation used in Arlington Building and other hotels and buildings for

which like heating service is being furnished by Mateer Corporation at such time, and in addition hereto, Arlington Corporation agrees to pay Mateer Corporation a sum equal to 15% of such share of said expenses of heating service payable by Arlington Corporation as provided in the within paragraph.

Fourth: For and during the period(s) in which Mateer Corporation shall furnish refrigeration service for Arlington Building hereunder, Arlington Corporation agrees to pay to Mateer Corporation a share of all expenses actually incurred by Mateer Corporation with respect to all refrigeration service furnished by it to the Consumer Corporations and others, (including, without limiting the generality of the foregoing language, expenditures for labor, supplies, maintenance and repairs of refrigeration equipment, and all other expenses incidental to refrigeration service), based upon the proportion which the number of square feet of refrigeration units used in the Arlington Building and supplied by Mateer Corporation bears to the total number of square feet of refrigeration units used in other hotels and buildings for which like refrigeration service is furnished by Mateer Corporation at such time, and in addition hereto, Arlington Corporation agrees to pay Mateer Corporation a sum equal to 15% of such share of said expenses of refrigeration service payable by Arlington Corporation as provided in the within paragraph.

Fifth: For and during the period(s) in which Mateer Corporation shall furnish electric lighting and power service for Arlington Building hereunder, Arlington Corporation agrees to pay to Mateer Corporation a share of all expenses actually incurred by Mateer Corporation with respect to all electric lighting and electric power service furnished by it to the Consumer corporations and others, (including, without limiting the generality of the foregoing language, meter cost of electric current and expenditures for renewals of fuse plugs and lamps, motor repairs, maintenance and repairs of electric lighting and power equipment, and all other expenses incidental to electric lighting and electric power service), based upon the proportion which the quantity of electric current used in Arlington Building and furnished by Mateer Corporation at any time bears to the total quantity
1582 of electric current used in Arlington Building and other hotels and buildings for which like service is

being furnished by Mateer Corporation at such time, and in addition thereto, Arlington Corporation agrees to pay to Mateer Corporation a sum equal to 15% of such share of said expenses of electric services payable by Arlington Corporation as provided in the within paragraph.

Sixth: For and during the period(s) in which Mateer Corporation shall furnish hot and cold water service for Arlington Building hereunder, Arlington Corporation agrees to pay to Mateer Corporation a share of all expenses actually incurred by Mateer Corporation with respect to all hot and cold water service furnished by it to the Consumer Corporations and others (including without limiting the generality of the foregoing language, meter cost of water and expenditures for filtration, maintenance and repairs of circulating pumps, pressure pumps, filters, equipment for heating water, and all other equipment used in supplying hot and cold water, supplies and all other expenses incidental to such water service), in the proportion which the number of water outlets used in Arlington Building at any time bears to the total number of such water outlets in use in Arlington Building and other hotels and buildings for which like water service is being furnished by Mateer Corporation at such time, and in addition thereto, Arlington Corporation agrees to pay to Mateer Corporation a sum equal to 15% of such share of the expenses of water service to be paid by Arlington Corporation as provided in the within paragraph.

Seventh: For and during the period(s) in which Mateer Corporation shall furnish gas service for Arlington Building hereunder, Arlington Corporation agrees to pay to Mateer Corporation a share of all expenses actually incurred by the Mateer Corporation with respect to all gas service furnished by Mateer Corporation to the Consumer Corporations and others, (including, without limiting the generality of the foregoing language, meter cost of gas, and expenditures for maintenance and repair of equipment used in supplying gas service), based upon a proportion to be determined by either of the respective methods described in subparagraphs (a) and (b) of this Seventh paragraph, at the discretion of Mateer Corporation.

(a) Arlington Corporation to pay a share of such expenses of gas service based upon the proportion which the number of gas outlets in use in Arlington Building at

any time bears to the total number of gas outlets used in Arlington Building and other hotels and buildings for which like gas service is being furnished by Mateer Corporation at such time, or

(b) Arlington Corporation to pay a share of such expenses if gas service based upon the proportion which the amount of gas used in Arlington Building at any time bears to the total amount of gas used in Arlington Building and other buildings for which like gas service is being furnished by Mateer Corporation at such time, as shown by readings of intermediary gas meters installed by Mateer Corporation,

and in addition thereto, Arlington Corporation agrees to pay to Mateer Corporation a sum equal to 15% of said share of the expenses of gas service payable by Arlington Corporation as provided in the within paragraph.

Eighth: For and during the period(s) in which Mateer Corporation shall furnish telephone service for Arlington Building hereunder, Arlington Corporation agrees to pay to Mateer Corporation, for and on account of telephone service furnished by Mateer Corporation for Arlington Building, as follows:

$.75 a year for each terminal in use at Arlington Building, provided that if the charge of the telephone
1583 company which at any time is furnishing telephone service to Mateer Corporation is increased or decreased, the said charge to Arlington Corporation for each terminal per year shall be likewise increased or decreased and in the same amount;

The actual cost of all Long Distance tolls originating in Arlington Building and the actual cost of all telegrams originating in Arlington Building charged on statements for telephone service rendered to Mateer Corporation.

The sum of 7¢ for each local call of 5 minutes' duration, plus 7¢ for each 5 minutes in excess of 5 minutes or fraction thereof on each local call, provided that for every increase or decrease in the charges made to Mateer Corporation for local calls by the Telephone Company which is at any time furnishing telephone service to Mateer Corporation, there shall be a like arithmetical increase or decrease in the amount to be paid to Mateer Corporation by Arlington Corporation for such local calls, provided further that fractions of a cent involved in any increase or decrease of charges by such Telephone Company to

Mateer Corporation for local calls shall not be taken into account in fixing charges to be made to Arlington Corporation for local calls.

In addition thereto, Arlington Corporation agrees to pay to Mateer Corporation a share of all expenses (except amounts paid by Mateer Corporation to the telephone company from which telephone service is procured) Actually incurred by Mateer Corporation with respect to all telephone service furnished by Mateer Corporation to the Consumer Corporations and others, including without limiting the generality of the foregoing language, expenditures for maintenance and repairs of a central switchboard and other telephone equipment, wages of employees engaged in telephone service, supplies, and all other expenditures incidental to such telephone service, based upon the proportion which the number of terminals in Arlington Building bears to the total number of terminals in the Arlington Building and in other hotels and buildings in which like telephone service is being rendered by Mateer Corporation at such time, and Arlington Corporation further agrees to pay to Mateer Corporation a sum equal to 15% of such share of the expenses of telephone service (exclusive of terminal charges and charges for local and long distance telephone calls and telegrams, payable by Arlington Corporation as provided in the within paragraph.

Ninth: It is understood and agreed that Mateer Corporation may furnish any service similar to those hereinabove described and provided to be furnished to Arlington Corporation and to the other Consumer Corporations, to other corporations, firms or individuals, and in any such event Arlington Corporation is to bear a share of the total expenses incurred by Mateer Corporation, based upon the proportions hereinabove indicated with respect to each such service.

Tenth: Arlington Corporation agrees to pay to Mateer Corporation the entire cost of maintenance and repairs of the tunnel constructed pursuant to a certain ordinance passed by the City Council of said City of Chicago, on November 8, 1923, (granting permission and authority to Lincoln Park Manor Building Corporation to construct, maintain and operate two tunnels, and a one story bridge or passage-way described in such ordinance), between the premises commonly known as Nos. 521-529 Arlington

Place, and the premises commonly known as Nos. 524-532 Arlington Place, and also agrees to pay to Mateer Corporation the full amount of the rent payable to said City of Chicago for the use of any street or streets in connection with said above described tunnel, in accordance with the terms of said ordinance, or any renewal or amendment thereof.

1584 Eleventh: It is further understood and agreed that the parties hereto will not make any amendments to or changes in the within agreement unless such amendments have been duly approved by the Trustee under the First Mortgage Deed of Trust, dated February 9, 1924, and, executed by Granada Hotel Corporation to Chicago Trust Company as Trustee, to secure the payment of the Granada Six and One-half per cent Real Estate Gold Bonds in the principal amount of $550,000.00. The provisions of this eleventh paragraph are expressly intended for the benefit of the holders of said bonds issued under said Trust Deed dated February 9, 1924.

It is further understood and agreed that neither said Trustee, or any of its agents or attorneys, shall be liable to the holders of said bonds or to anyone else for anything done or omitted to be done with respect to, or in pursuance of, the provisions of this eleventh paragraph.

Twelfth: All moneys agreed to be paid by Arlington Corporation to Mateer Corporation hereunder shall be payable monthly (i. e. on the basis of calendar months, or fractions thereof) within 5 days after statements are rendered by Mateer Corporation. Statements rendered by Mateer Corporation covering charges for services rendered in any calendar month shall be based upon expenses incurred during such calendar month.

Thirteenth: It is further agreed by the parties hereto that the agreements herein contained shall be binding upon, apply and inure to, their respective successors and assigns.

In Witness Whereof, the said Arlington Apartment Building Corporation, party of the first part, and the said Mateer Hotels, Inc., the party of the second part, have caused this instrument to be signed in their behalf, by their respective Presidents or Vice Presidents thereunto duly authorized, and have caused their respective corporate seals to be affixed, attested by their respective sec-

retaries or assistant secretaries, all on the day and year first above written.

Arlington Apartment Building Corporation,
By Wm. J. Lloyd,
President.

Attest:
D. B. Hall,
Secretary.

Mateer Hotels, Inc.,
By Fred D. Mateer,
President.

Attest:
P. R. Widmer,
Secretary.

Executed in Duplicate.

1633-A CITY NATIONAL EXHIBIT A-3.

Inventory and Appraisal of Granada Hotel.
525 Arlington Place.
Chicago.

1633-C

Chicago, Ill.,

July 31, 1933.

Mr. Edward Hall,
The Granada Hotel,
525 Arlington Place,
Chicago, Illinois.

Dear Mr. Hall:

The following schedules consist of a complete inventory of all the furniture, carpets, rugs, draperies, lamps, bedding, china, silver, glass, kitchen utensils, Inador beds, built in kitchen cabinets, (wood and metal), built in China cabinets, at the building known as the Granada Hotel, 525 Arlington Place, Chicago.

You will note that the first 19 pages consist of a detailed inventory of every item in each individual apartment, with exception of the carpets. The balance of the building, such as all the public rooms, linen room, furniture store room, etc., are a part of the inventory but are all included in the appraisal. In this way, you have a complete inventory of every piece of furniture in every room in the house.

Due to the fact that parts of some apartments have one quality of carpet and the balance another quality, we have given you a condensed total yardage of each grade of each quality of carpet.

This appraisal is made on the following basis: Cost of replacing article of identical quality less the depreciation of the said article, or in other words, its value to the hotel based on today's market value new less depreciation.

For your information, our method of arriving at the value of the kitchen cabinet, (wood and metal), also the China cabinet, is as follows:

Wood cabinet new today installed $95.00. Useful life of cabinet 25 years. In use 8 years, or a depreciation of 4.75 per year, making a total depreciatic of $38.00; leaving a net value to the hotel of $57.00.

This Appraisal Does Not take into consideration the necessity or lack of necessity of any article, nor does it include lighting fixtures or machinery of any kind.

When taking this appraisal, we had Mr. C. S. Parker, the manager, accompany us in every apartment on the first and second floors for the purpose of identifying any piece of furniture which might belong to the tenant of that apartment, and we had Mrs. A. F. Gahlan, the housekeeper of the Granada and Arlington Hotels, accompanying us to the third, fourth and fifth floors, linen rooms, all furniture store rooms, etc., to make identifications.

Due to any inaccuracies that is possible in taking an inventory of this size and due to the possibility of wrong identification of some items, such as odd pieces of furniture, china, glass, silverware, etc., we would suggest that an allowance be made, to be added or subtracted from the total amount of the value of this appraisal, of $350.00.

The physical condition of the interior of this hotel, which includes corridors, typical apartments and public rooms is remarkably clean and well-kept; especially so, considering the reduced mail service.

Your attention is called to the fact that this appraisal, being based on today's market values, is subject to fluctuation, for the prices of all merchandise included in this appraisal is advancing vary fast and if the market continues to advance in the next three months as it has advanced the last two months, the merchandise in this building will be worth considerably more than it is today. The
1633-D grand total value as appraised by us of all items included in the appraisal is $42,955.50.

All detailed information on this appraisal is held in the files of the Chicago Seating Company.

Respectfully submitted,
Chicago Seating Company,
W. J. Murphy,
W. J. Murphy,
Gary Young,
Gary Young,

1633-EE Recapitulation Page 1

	Total		Price	Total
Davenports A	32		30.00	960.00
Davenports B	24		25.00	600.00
Davenports C	34		15.00	510.00
Easy Chairs A	33		17.50	577.50
Easy Chairs B	23		12.00	276.00
Easy Chairs C	51		8.00	408.00
Coxwell Chairs A	29		17.00	493.00
Coxwell Chairs B	13		12.00	156.00
Coxwell Chairs C	7		8.00	56.00
Open Arm Chair A	32		9.00	288.00
Open Arm Chair B	27		6.00	162.00
Open Arm Chair C	41		2.50	102.50
Side Chairs C	370		1.75	647.50
Lamps—Floor	103		2.25	228.75
Lamps—Bridge	114		1.75	199.50
Desks—Drop Leaf	37		8.50	314.50
Desks—Secretary	60		10.00	600.00
Drawer Dining Table	38		7.50	285.00
Extension D. Table	40		11.00	440.00
End Table	146		.90	131.40
Occasional Table	23		4.00	92.00
Coffee Table	47		2.50	117.50
Smokers	93		.60	55.80
Pictures	127		.60	76.20
Tapestry	10		1.00	10.00
Lamps Table	14		2.80	39.20
Beds Wood 4' 6"	11		16.00	176.00
Beds Metal 4' 6"	1		15.00	15.00
Beds Wood 3' 3"	32		16.00	512.00
Beds Metal 3' 3"	6		15.00	90.00
White Inador Beds Complete 4' 6"	83		26.00	2,158.00
White Inador Beds Complete 3' 3"	27		26.00	702.00
Dressers Walnut	57		12.00	684.00
Dressers Maple	41		18.00	738.00
Chest of Drawers Walnut	14		7.00	98.00
Chest of Drawers Maple	43		10.00	43.00
Dressing Table Maple	25		10.00	250.00
Nite Table	2		1.00	2.00
Maple Bench	21		2.00	42.00
Kitchen Cabinet Wood	52		57.00	2,964.00
Kitchen Cabinet Metal	43		51.00	2,193.00
China Service for 6	49		3.00	147.00
China Service for 4	36		2.25	81.00
Silver Service for 6	39		1.15	44.85
Silver Service for 4	23		.90	20.70
Glasses Service for 6	29		.45	13.05
Glasses Service for 4	20		.35	7.00
Kitchen Utensils	60		1.80	108.00
Waste Baskets	145		.10	14.50
Carpet Sweepers	53		1.00	53.00
419 yds Carpet 3/4 Axm. A	419 yds		1.50	628.50
3/4 Carpet Axm. B	1916		1.00	1,916.00
3/4 Carpet Axm. C	1750		.40	700.00
3/4 Carpet Wilton Vel A	729		2.00	1,458.00
3/4 Carpet Wilton Vel B	741		1.40	1,037.40
3/4 Carpet Wilton Vel C	270		.45	121.50
5' 6" Corr. Carpet	503		1.80	905.40
Print Linoleum A	43	sq. yd.	.60	25.80
Print Linoleum B	11	sq. yd.	.35	3.85
Print Linoleum C			No Value	
Inlay Linoleum A	132	sq. yd.	.80	105.60
Inlay Linoleum B	35	sq. yd.	.45	15.75
				25,899.75

1633-FF Recapitulation Page 2

	Total	Price	Total
Kitchen Stools	35	.25	8.75
Curtains Pr.	414	.75	310.50
Draperies Pr. with Cornice	144	2.35	338.40
French Door Curtains Pr.	57	.75	42.75
Stoves Large	50	14.50	725.00
Stoves Small	42	12.00	504.00
China Cabinets	62	6.00	372.00
Ironing Boards	60	.50	30.00
Wall Hangings	2	3.00	6.00
W. I. Console & Mirror	15½	6.00	93.00
Pillows Pr.	143	1.50	214.50
Small Table	1	2.00	2.00
Telephone Stand Wood	14	2.50	35.00
Metal Cabinet	1	3.00	3.00
Wall Lamp & Shade	10	2.50	25.00
Uphol. Stool C	28	.40	11.20
Fibre Table	5	2.50	12.50
Fibre Settee	1	7.50	7.50
Fibre Chairs	4	4.00	16.00
Fibre Rocker	2	4.00	8.00
Fibre Desk	1	3.50	3.50
Fibre Desk Chair	1	2.00	2.00
Mirror Typical	20	1.00	20.00
Fibre Chaise Lounge	1	7.00	7.00
Chifferobe	4	6.00	24.00
Wardrobe Birch Large	30	5.00	150.00
Wardrobe Birch Small	42	4.00	168.00
Wardrobe Walnut	2	10.00	20.00
Card Tables	22	.75	16.50
Folding Chair—Wood	7	1.50	10.50
Folding Chair—Metal	4	2.25	9.00
Day Bed & Pad—Wood	2	8.00	16.00
China Server—Walnut	14	14.00	196.00
Spec. Smokers	2	4.00	8.00
F. L. Base Only	1	.50	.50
Br. Base Only	1	.50	.50
Server Walnut	10	8.00	80.00
Large Cabinet Walnut	7	4.50	31.50
Telephone Stand & Chair—Metal	4	4.00	16.00
Maple Bench	5	2.00	10.00
D. L. Table	3	5.00	15.00
Bed Davenport C	1	9.00	9.00
G. L. Table	9	5.00	45.00
Spec. Spring & Mattress & Base	2	9.50	19.00
Spinet Desk	1	4.00	4.00
Desk F. T. Small	2	3.00	6.00
Spec. Davenport A	1	35.00	35.00
Spec. E. Chair A	1	18.00	18.00
Occ. Table	1	9.00	9.00
Sofa Table	3	12.00	36.00
Seat Pads 8'	8	14.00	112.00
Drum Table	1	10.00	10.00
Slip Cover—Sofa	1	6.00	6.00
Slip Cover—Easy Chair	1	3.00	3.00
Slip Cover—Pads	2	4.00	8.00
Spec. Drap. Pr.	2	20.00	40.00
Spec. Drap. Pr.	1	12.00	12.00
			29,840.85

1633-GG Recapitulation Page 3

	Total	Price	Total
Spec. Draperies	3	15.00	45.00
Spec. Stove 4 burner	1	18.00	18.00
Kitchen Table	2	4.00	8.00
Ironing Board Cabinet	4	3.00	12.00
Serving Cabinet	3	4.00	12.00
Rug 3 x 5	1	3.00	3.00
Small Cabinet Walnut	2	5.00	10.00
White Bed only 3/3	1	16.00	16.00
Oak Chest	3	3.00	9.00
Mah. Rocker	1	4.50	4.50
D. R. Table	2	14.00	28.00
Chinese Rug 4.6 x 7.6	1	35.00	35.00
Vanity Enamel	2	8.00	16.00
Tilt Top Table	2	1.00	2.00
Mirror 24 x 6 ft	3	10.00	30.00
Rug 27 x 54	1	2.00	2.00
Spec. Secretary	3	25.00	75.00
Oil Painting	1	25.00	25.00
Oval Maple Tables	1	2.50	2.50
Windsor Rocker	1	4.50	4.50
Special Draperies	6	10.00	60.00
Table Scarf	1	1.00	1.00
Portiers Pr	1	15.00	15.00
Grand Piano	1	175.00	175.00
Screen	1	3.00	3.00
Special Cabinet	1	24.00	24.00
Simons Metal Desk	1	8.50	8.50
Love Seat	1	25.00	25.00
D. L. Deck	1	20.00	20.00
Bed Enamel 4/6 Cpt	1	14.00	14.00
Bed Walnut 4/6	1	16.00	16.00
Dresser Walnut	1	26.00	26.00
Chest Walnut	1	16.00	16.00
			$ 30,601.85
Linens			1,992.22
Lobby			2,072.95
Ladies' Room			352.50
Corridor			23.00
Mens' Smoking Room			292.50
Sun Parlor North			165.95
Sun Parlor South			177.25
Entrance			121.00
Foyer			381.00
Ball Room			4,938.45
Kitchen Off Ball Room			203.00
Vault Room			7.00
Mr. Parkers' Office			304.70
Auditor's Office			165.35
Front Lobby Office			107.50

1938-HH Page 4

Recapitulation

Front Desk	82.50
Terrace & Garden	114.00
Elevator Foyer—1st Floor	52.00
Second Floor Foyer	16.00
Third Floor Foyer	15.00
Fourth Floor Foyer	20.00
Fifth Floor Foyer	16.00
Furniture Store Room #1	361.43
Furniture Store Room #2	104.80
Basement Store Room	10.00
Maids' Room	27.75
Linen Room	229.80
	42,955.50

1905-11

CITY NATIONAL EXHIBIT 2

GRANADA APARTMENT HOTEL

Charges and Credits to Lincoln Park Manor in Respect to Heat, Refrigeration and Water
Years 1930 to 1936, inclusive

	Charges				Credits	
	Heat and Refrig.	Water	Elevator	Total	Cash	Other
1930	7,291.67	360.		7,651.67	6,610.11	1,041.56Ⓐ
1931	6,458.35	360.		6,818.35	6,610.02	208.33Ⓑ
1932	6,250.02	360.		6,610.02	6,610.02	
1933	6,250.02	360.		6,610.02	6,610.02	
1934	6,250.02	360.		6,610.02	6,610.02	
1935	6,250.02	360.		6,610.02	6,610.02	
1936	6,250.02	360.		6,610.02	6,610.02	
	45,000.12	2,520.00		47,520.12	46,270.23	1,249.89

Ⓐ Adjustment for April to August, inclusive, from $625. to $416.67
Ⓑ 208.33 x 5—1,041.65.

1905-12

GRANADA APARTMENT HOTEL
LINCOLN PARK MANOR

	Heat and Refrigeration	Water	Total		
Jany. '30.....	625.	30.	655.	655.	
Febry. "	625.	30.	655.	655.	
Mar. "	625.	30.	655.	655.	
Apl. "	625.	30.	655.	655.	
May "	625.	30.	655.	655.	
June "	625.	30.	655.	655.	
July "	625.	30.	655.		
Aug. "	625.	30.	655.	268.44	1,041.56
Sept. "	416.67	30.	446.67	446.67	
Oct. "	625.	30.	655.	655.	
Nov. "	625.	30.	655.	655.	
Dec. "	625.	30.	655.	655.	
	7,291.67	360.	7,651.67	6,610.11	1,041.56
Jany. '31.....	625.	30.	655.	655.	
Febry. "	625.	30.	655.	655.	
Mar. "	625.	30.	655.	655.	
Apl. "	625.	30.	655.	446.67	208.33
May "	416.67	30.	446.67	446.67	
June "	416.67	30.	446.67	446.67	
July "	416.67	30.	446.67	446.67	
Aug. "	416.67	30.	446.67	446.67	
Sept. "	416.67	30.	446.67	446.67	
Oct. "	625.	30.	655.	655.	
Nov. "	625.	30.	655.	655.	
Dec. "	625.	30.	655.	655.	
	6,458.35	360.	6,818.35	6,610.02	208.33
Jany. '32.....	625.	30.	655.	655.	
Febry. "	625.	30.	655.	655.	
Mar. "	625.	30.	655.	655.	
Apl. "	416.67	30.	446.67	446.67	
May "	416.67	30.	446.67	446.67	
June "	416.67	30.	446.67	446.67	
July "	416.67	30.	446.67	446.67	
Aug. "	416.67	30.	446.67	446.67	
Sept. "	416.67	30.	446.67	446.67	
Oct. "	625.	30.	655.	655.	
Nov. "	625.	30.	655.	655	
Dec. "	625.	30.	655.	655.	
	6,250.02	360.	6,610.02	6,610.02	

1905-13

GRANADA APARTMENT HOTEL
LINCOLN PARK MANOR

	Heat and Refrigeration	Water	Total		
Jany. '33	625.	30.	655.	655.	
Febry. "	625.	30.	655.	655.	
Mar. "	625.	30.	655.	655.	
Apl. "	416.67	30.	446.67	446.67	
May "	416.67	30.	446.67	446.67	
June "	416.67	30.	446.67	446.67	
July "	416.67	30.	446.67	446.67	
Aug. "	416.67	30.	446.67	446.67	
Sept. "	416.67	30.	446.67	446.67	
Oct. "	625.	30.	655.	655.	
Nov. "	625.	30.	655.	655.	
Dec. "	625.	30.	655.	655.	
	6,250.02	360.	6,610.02	6,610.02	
Jany. '34					
Febry. "					
Mar. "					
Apl. "					
May "					
June "					
July "					
Aug. "					
Sept. "					
Oct. "					
Nov. "					
Dec. "					
	6,250.02	360.	6,610.02	6,610.02	
Jany. '35					
Febry. "					
Mar. "					
Apl. "					
May "					
June "					
July "					
Aug. "					
Sept. "					
Oct. "					
Nov. "					
Dec. "					
	6,250.02	360.	6,610.02	6,610.02	

Also 1936.

CITY NATIONAL EXHIBIT 3

1905-14 GRANADA APARTMENT HOTEL

Charges and Credits to Arlington in respect to Heat, Refrigeration and Water
Years 1930 to 1936 inclusive

	Charges				Credits	
	Heat and Refrig.	Water	Elevator	Total	Cash	Other
1930	$10,800.00	$ 480.00	$ 900.00	$12,180.00	$12,180.00	
1931	10,800.00	480.00	900.00	12,180.00	12,180.00	
1932	10,800.00	480.00	900.00	12,180.00	12,180.00	
1933	10,800.00	480.00	900.00	12,180.00	8,100.00	4,080.00Ⓐ
1934	6,840.00	360.00	—	7,200.00	7,200.00	
1935	6,840.00	360.00	—	7,200.00	7,200.00	
1936	6,840.00	360.00	—	7,200.00	7,200.00	
	$63,720.00	$ 3,000.00	$ 3,600.00	$70,320.00	$66,240.00	4,080.00

Ⓐ Represents credit made December 1933 retroactive for the twelve months of 1933 as below.

	Previous	Subsequent	Credit			
Heat and Regrig.	$ 900.00	$ 570.00	$ 330.	x	12	= $ 3,960.00
Water	40.00	30.00	10.	x	12	120.00
						$ 4,080.00

1905-15 **GRANADA APARTMENT HOTEL**

HEAT, LIGHT AND POWER

	Heat and Refrigeration	Water	Elevator		Cash
Jany. '30	900.00	40.00	75.00	1,015.	1,015.
Febry. "	900.00	40.00	75.00	1,015.	1,015.
Mar. "	900.00	40.00	75.00	1,015.	1,015.
Apl. "	900.00	40.00	75.00	1,015.	1,015.
May "	900.00	40.00	75.00	1,015.	1,015.
June "	900.00	40.00	75.00	1,015.	1,015.
July "	900.00	40.00	75.00	1,015.	1,015.
Aug. "	900.00	40.00	75.00	1,015.	1,015.
Sept. "	900.00	40.00	75.00	1,015.	1,015.
Oct. "	900.00	40.00	75.00	1,015.	1,015.
Nov. "	900.00	40.00	75.00	1,015.	1,015.
Dec. "	900.00	40.00	75.00	1,015.	1,015.
	10,800.00	480.00	900.00	12,180.	12,180.
Jany. '31	900.00	40.00	75.00	1,015.	1,015.
Febry. "	900.00	40.00	75.00	1,015.	1,015.
Mar. "	900.00	40.00	75.00	1,015.	1,015.
Apl. "	900.00	40.00	75.00	1,015.	1,015.
May "	900.00	40.00	75.00	1,015.	1,015.
June "	900.00	40.00	75.00	1,015.	1,015.
July "	900.00	40.00	75.00	1,015.	1,015.
Aug. "	900.00	40.00	75.00	1,015.	1,015.
Sept. "	900.00	40.00	75.00	1,015.	1,015.
Oct. "	900.00	40.00	75.00	1,015.	1,015.
Nov. "	200.00	40.00	75.00	1,015.	1,015.
Dec. "	900.00	40.00	75.00	1,015.	1,015.
	10,800.00	480.00	900.00	12,180.	12,180.
Jany. '32	900.00	40.00	75.00	1,015.	1,015.
Febry. "	900.00	40.00	75.00	1,015.	1,015.
Mar. "	900.00	40.00	75.00	1,015.	1,015.
Apl. "	900.00	40.00	75.00	1,015.	1,015.
May "	900.00	40.00	75.00	1,015.	1,015.
June "	900.00	40.00	75.00	1,015.	1,015.
July "	900.00	40.00	75.00	1,015.	1,015.
Aug. "	900.00	40.00	75.00	1,015.	1,015.
Sept. "	900.00	40.00	75.00	1,015.	1,015.
Oct. "	900.00	40.00	75.00	1,015.	1,015.
Nov. "	900.00	40.00	75.00	1,015.	1,015.
Dec. "	900.00	40.00	75.00	1,015.	1,015
	10,800.00	480.00	900.00	12,180.	12,180.

1905-16 GRANADA APARTMENT HOTEL

	Heat and Refrigeration	Water	Elevator	Total	Cash
Forward	330.	10.		340.	
Jany. '33	900.00	40.00	75.00	1,015.	1,015.
	330.	10.		340.	
Febry. "	900.00	40.00	75.00	1,015.	1,015.
	330.	10.		340.	
Mar. "	900.00	40.00	75.00	1,015.	1,015.
	330	10.		340.	
Apl. "	900.00	40.00	75.00	1,015.	1,015.
	330.	10.		340.	
May "	900.00	40.00	75.00	1,015.	1,015.
	330.	10.		340.	
June "	900.00	40.00	75.00	1,015.	1,015.
	330.	10.		340.	
July "	900.00	40.00	75.00	1,015.	
	330.	10.		340.	
Aug. "	900.00	40.00	75.00	1,015.	
	330.	10.		340.	
Sept. "	900.00	40.00	75.00	1,015.	
	330.	10.		340.	
Oct. "	900.00	40.00	75.00	1,015.	
	330.	10.		340.	
Nov. "	900.00	40.00	75.00	1,015.	
	330.	10.00		340.	
Dec. "	900.00	40.00	75.00	1,015.	2,010.00
	10,800.00	480.00	900.00	12,180.	8,100.
Jany. '34	570.00	30.00		600.	
Febry "	570.00	30.		600.	
Mar. "	570.00	30.		600.	
Apl. "	570.	30.		600.	
May "	570.	30.		600.	
June "	570.	30.		600.	3,600.
July "	570.	30.		600.	600.
Aug. "	570	30.		600.	600.
Sept. "	570.	30.		600.	600.
Oct. "	570.	30.		600.	600.
Nov. "	570.	30.		600.	600.
Dec. "	570.	30.		600.	600.
	6,840.	360.		7,200.	7,200.
Jany. '35	570.	30.		600.	600.00
Febry. "	570.	30.		600.	600.00
Mar. "	570.	30.		600.	600.00
Apl. "	570.	30.		600.	600.00
May "	570.	30.		600.	600.00
June "	570.	30.		600.	600.00
July "	570.	30.		600.	600.00
Aug. "	570.	30.		600.	600.00
Sept. "	570.	30.		600.	600.00
Oct. "	570.	30.		600.	600.00
Nov. "	570.	30.		600.	600.00
Dec. "	570.	30.		600.	600.00
	6,840.	360.		7,200.	7,200.

1905-17 GRANADA APARTMENT HOTEL

	Heat and Refrigeration	Water	Elevator	Total	Cash
Forward					
Jany. '36	570.	30.		600.	600.00
Febry. "	570.	30.		600.	600.00
Mar. "	570.	30.		600.	600.00
Aprl "	570.	30.		600.	600.00
May "	570.	30.		600.	600.00
June "	570.	30.		600.	600.00
July "	570.	30.		600.	600.00
Aug. "	570.	30.		600.	600.00
Sept. "	570.	30.		600.	600.00
Oct. "	570.	30.		600.	600.00
Nov. "	570.	30.		600.	600.00
Dec. "	570.	30.		600.	600.00
	6,840.	360.		7,200.	7,200.

1905-18 CITY NATIONAL EXHIBIT 4

GRANADA APARTMENT HOTEL

	Heat and Refrigeration	Water	Total
Arlington Apartment Hotel	59,760.00	2,880.00	62,640.00
Lincoln Park Manor	43,750.23	2,520.00	46,270.23
	103,510.23	5,400.00	108,910.23
Reconciliation:			
Total Cash Receipts			
Arlington	66,240.00		
Lincoln Pk	46,270.23	112,510.23	
Less—Elevator—Arlington		3,600.00	108,910.23

1905-19

EXHIBIT 5

Excerpts from City National

Granada Apartments, Inc., Special Report, December 31, 1929

Prepared by

HOTEL AUDIT BUREAU

Chicago, Illinois

1905-31

Granada Apartments, Inc., Heat, Light and Power Expense
Year Ended December 31, 1929

	Amount
Wages	$ 4 630 00
Coal	969 40
Fuel Oil	8 300 02
Gas	925 25
Electric Light and Power	7 010 90
Water	2 061 93
Hauling Ashes	128 81
Total	24 026 31
Less: Sales	15 315 53
Total Heat, Light and Power Expense (Carried to Exhibit "A")	$ 8 710 78

Note: See the comments which are a part of this report.

Schedule A-3

2110-18

EXHIBIT 6

Excerpt from City National

The Granada, Heat, Light, Power and Refrigeration

Month of December, 1930 and Year Ended December 31, 1930

	December 1930	Year 1930
Payroll	$ 193 00	$ 3 558 77
Fuel Oil	1 226 25	8 345 75
Gas	83 36	820 20
Electric Light and Power	613 11	7 097 36
Water	28 29	1 766 64
Refrigeration Supplies and Repairs	9 90	756 84
Water Meters		51 00
Miscellaneous Supplies and Expense	37 00	206 72
Total Heat, Light, Power and Refrigeration Expense	2 190 91	22 603 28
Less: Heat, Water and Refrigeration Sold	1 595 00	17 890 02
Net Cost Heat, Light, Power and Refrigeration (Carried to Exhibit "B")	$ 595 91	$ 4 713 26

Schedule B-4

2111-6

EXHIBIT 7

Schedule I

The Granada Apartment Hotel Operating Expenses

Month and Year Ended December 31, 1931, as Prepared from the Books

Particulars	December	Year
General and Administrative		
Payroll	$ 185.26	$ 3,191.70
Bonus to Manager	—	400.00
Advertising	.85	108.50
Legal and Auditing	663.17	2,308.35
Insurance	124.55	1,471.41
Provision for Bad Debts	100.00	1,200.00
Office Stationery and Supplies	22.19	237.79
Additional Provision for Bad Debts	6,612.07	6,612.07
Postage	3.53	63.52
State Franchise Tax	—	52.50
Miscellaneous	38.10	656.54
Total	$ 7,798.02	$ 16,302.38
Rooms		
Payroll	$ 1,426.91	$ 17,813.34
Laundry	219.67	2,374.41
Gas	69.02	713.02
Provision for Replacement of Operating Equipment	100.00	1,200.00
Stationery	—	120.93
Housekeepers Supplies	81.45	680.61
Miscellaneous	24.15	205.09
Total	$ 1,921.20	$ 23,107.40
Heat, Light, Power and Refrigeration		
Payroll	$ 427.51	$ 3,723.95
Fuel Oil	769.63	6,876.83
Light and Power	621.61	7,022.72
Water	203.49	2,158.92
Miscellaneous	—	406.30
Total	$ 2,022.24	$ 20,188.72
Less Sales	1,595.00	17,890.02
Net Expense	$ 427.24	$ 2,298.70
Repairs and Maintenance		
Payroll	$ 192.50	$ 2,960.76
Boiler Repairs	17.00	534.60
Plumbing	12.46	443.37
Building	28.09	573.26
Paints and Supplies	29.98	790.05
Electric Bulbs	4.00	404.38
Furniture	27.27	532.25
Miscellaneous	24.72	934.95
Total	$ 328.02	$ 7,173.62

CITY NATIONAL EXHIBIT 8

2115

GRANADA APARTMENT HOTEL
Heat, Light and Power

Expenses	Five mos. to 12/31 1932	Years 1933	1934	1935	1936
Wages	1,025.00	2,458.11	2,432.70	2,460.00	2,460.00
Fuel Oil	3,136.26	6,892.86	7,313.41	7,510.83	7,759.19
Electricity	2,891.92	7,066.96	7,410.60	7,278.62	7,356.82
Water	1,598.34	1,949.22	2,248.47	1,997.31	2,057.44
	8,651.52	18,367.15	19,405.18	19,246.76	19,633.45
Charged other Hotels	7,208.34	13,810.02	13,810.02	13,810.02	13,810.02
Cost to Granada—exclusive of Depreciation and Interest on Invest.	1,443.18	4,557.13	5,595.16	5,436.74	5,823.43
Interest on $44,000 @ 5%	1,888.00	4,400.00	4,400.00	4,400.00	4,400.00
Deprec. on 44,000 @ 5%					
	3,276.18	8,957.13	9,595.16	9,836.74	10,223.43

16,280 Refrig.
19,000 Heat
9,000 Pumper
44,280

2116 GRANADA APARTMENT HOTEL

Income	Five mos. Ended Dec. 31, 1932	Years 1933	1934	1935	1936
Rentals	$28,057.41	$73,499.36	$67,406.91	$64,664.79	$69,707.09
Less: Rebates and Allowances		4,332.14	2,142.00	1,691.36	1,400.38
	28,057.41	69,167.22	65,264.95	62,973.43	68,306.91
Laundry —Net	39.38	142.14	131.06	170.73	124.90
Valet —Net	119.10	276.36	233.80	194.16	199.96
Cigars, Cigarettes, etc.—Net	20.43	186.63	61.77*	46.70	65.12
Miscellaneous	13.77	61.10	137.99	103.13	361.76
	28,250.09	69,833.45	65,705.99	63,488.15	69,068.45
Hotels and Others:					
Heat and Refrigeration	7,208.34	12,970.02	13,090.02	13,090.02	13,090.02
Water	350.00	840.00	720.00	720.00	720.00
Topics	61.79	4.57*	58.74	10.44*	23.01*
	7,620.13	13,805.45	13,868.76	13,799.58	13,787.01
Total Income—Forward	35,870.22	83,638.90	79,574.75	77,287.73	82,855.46
Expenses					
Operating:					
Rooms—					
Wages	4,461.59	14,311.76	17,392.06	16,206.66	15,837.34
Laundry	997.15	2,315.94	2,518.34	2,734.97	2,899.69
Cleaning Supplies	256.99	637.41	847.09	847.59	858.55
Gas	303.80	799.86	823.65	665.85	766.51
Linen replacements	227.30				
Equipment replacements	105.45				
Cleaning rugs, drapes, etc.	7.65	10.25	57.24	22.88	62.45
Garbage removal	50.00	120.00	120.00	120.00	120.00
Miscellaneous		679.98	866.19	341.59	461.15
	6,409.93	18,875.20	22,624.57	20,939.54	21,005.69
Heat, Light and Power					
Wages	1,025.00	2,458.11	2,432.70	2,460.00	2,460.00
Electricity	3,136.26	6,892.86	7,313.41	7,510.83	7,759.19
Fuel Oil	2,891.92	7,066.96	7,410.60	7,278.62	7,356.82
Water	1,598.34	1,949.22	2,248.47	1,997.31	2,057.44
	8,651.52	18,367.15	19,405.18	19,246.76	19,633.45
Forward	15,061.45	37,242.35	42,029.75	40,186.30	40,639.14

*Denotes red figures

-2118-2119-2120

	35,870.22	83,638.90	79,574.75	77,287.73	82,845.46
	15,061.45	37,242.35	42,029.75	40,186.30	40,639.14
airs and Maintenance					
ages	963.58				
ilding	11.22				
inting and Decorating	222.38	2,303.87	3,468.70	2,954.41	3,104.35
rniture and fixtures	31.82	2,450.91	3,990.01	5,798.34	9,543.77
echanical and Electrical	72.74	2,563.93	3,042.03	1,725.53	2,030.94
levators	15.15			276.15	98.00
ght bulbs	193.46	291.10	358.15	264.09	264.40
umbing	69.02				
ngine room					
Boiler	13.32				
Engine	3.50	519.02	878.62	1,091.27	212.00
Refrigerator	277.74				
	1,873.93	8,128.83	1,736.91	12,109.79	15,253.46
eral and Administrative					
ages	1,732.50				
gents' Compensation	1,075.01				
elephone	1,387.84	3,293.67	2,878.44		
elephone—charged to guests	1,169.34*	3,057.13*	2,337.85*	653.05	546.98
egal and Auditing	400.40	1,863.54	981.70	1,078.89	780.00
ntertaining	290.01				
dvertising	56.00	23.62	23.50	582.92	785.81
ainting and Stationery, etc	15.93	77.75	420.08	236.75	238.83
xchange and on cheques	29.44				
artage	6.80				
iscellaneous	15.72				
rovision for Bad Debts	750.00	1,800.00	1,800.00	889.31	242.12
					1,223.72
surance		1,378.81	1,488.67	1,335.30	231.07
anagement Fee		700.00	2,984.12	3,323.59	3,535.17
	4,590.30	6,080.26	8,239.66	8,099.81	7,583.70
dup Robbery	166.02				
	4,756.32	6,080.26	8,239.66	8,099.81	7,583.70
Total Expenses	21,691.70	51,451.44	62,006.32	60,395.90	63,476.30
Income—before Invest, Insce, Taxes, epreciation and Amortization	14,178.52	32,187.46	17,568.43	16,891.83	19,369.16

Entered Oct. 14, 1937.

239 And afterwards, to wit, on the 14th day of October, A. D. 1937, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

240 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—65811) * *

Thursday, October 14, A. D. 1937.

Present: The Honorable John P. Barnes, District Judge.

It Is Ordered by the Court that this cause be and the same is hereby referred to Carl R. Chindblom Special Master to receive the evidence of any applicant for fees. Said Special Master to ~~reduce~~ said evidence to writing and report the same to this Court and this cause is continued to October 21 A. D. 1937 for hearing on Petitions for fees and entry of Final Decrees On motion of Weightstill Woods Trustee It is ordered that leave be and the same is hereby given him to file petition for fees within 5 days from this date.

241 And on, to wit, the 21st day of October, 1937, came Carl R. Chindblom, Referee, etc., and filed in the Clerk's office of said Court his certain Report in words and figures following, to wit:

242 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Oct. 21, 1937.

* * * (Caption—65811) * *

REPORT OF CARL R. CHINDBLOM, REFEREE IN BANKRUPTCY, AS SPECIAL MASTER, ON TAKING OF EVIDENCE ON APPLICATIONS FOR FEES AND EXPENSES.

To the Honorable John P. Barnes, Judge of the District Court of the United States, for the Northern District of Illinois, Eastern Division, in Bankruptcy Sitting:

Honorable Sir:

In the above matter, your Honor, on October 14, 1937, referred to me, as Special Master, the applications for fees, for hearing and reporting to your Honor such evidence as would be presented before me by the various applicants. Inasmuch as one of said applicants had come from Danville, Illinois, I set the matter for immediate hearing at 1 o'clock P. M., on said date of October 14, 1937. Thereafter, the hearing was continued and evidence taken on October 16, 1937, October 18, 1937, October 19, 1937 and October 20, 1937.

243 In compliance with your Honor's order, I hereby Report that I caused the evidence submitted to be reduced to writing and transmit the same herewith in a Transcript covering 244 pages. I personally took such part in the examination of the witnesses as I thought necessary and helpful to ascertain essential facts for the information of your Honor.

Witnesses Heard.

For the convenience of your Honor, I Further Report that testimony was taken on behalf of the following applicants for fees and expenses, as hereinafter shown, viz.:

Fred C. Meyers:

This applicant testified (Transcript, pages 3 to 35) in his own behalf, as Temporary Trustee, and requested the allowance of a fee of $5,000.00 and reimbursement of $750.00 for expenses.

Weightstill Woods:

Was called as a witness on behalf of Mr. Myers and testified as shown on pages 35 to 43 of the Transcript.

Samuel Micon:

This applicant testified (Transcript, pages 43 to 72) in his own behalf as attorney for Edwin Rosenberg, a creditor, and requested the allowance of a fee of $2,500.00 for services in a proceeding in the Circuit Court of Cook County, Illinois, case No. 37 C 3704, entitled "Edwin Rosenberg *vs.* Granada Apartments, Inc.," and also re-
244 quested the allowance of a fee of $500.00 for services in the present proceeding, and reimbursement of $25.00 for expenses.

David H. Greenberg:

This applicant testified (Transcript, pages 73 to 81) in his own behalf as attorney for petitioning creditors and requested the allowance of a fee of $4,500.00, and reimbursement of $135.00 for costs, for himself and his partners, Jay R. Lasky and Gilbert F. Wagner.

Mr. Jay R. Lasky:

Also testified as shown on pages 82 to 87 of the Transcript.

David H. Kraft:

This applicant testified (Transcript, pages 94 to 113) in his own behalf as attorney for Maurice M. Kraft, holder of a $500.00 first mortgage bond, and requested the allowance of a fee of $100.00 for services in this proceeding.

Mort. D. and Frank Goldberg:

Morton D. Goldberg testified (Transcript, pages 117 to 126) on behalf of these claimants that he is a member of the law firm of Morton D. Goldberg and Frank Goldberg, attorneys for the Debtor corporation, and requested an allowance of $6,500.00 for fees and reimbursements of $174.55 for costs and expenses.

245 Bondholders Protective Committee.

Vincent O'Brien, Esq., of the law firm of Defrees, Buckingham, Jones & Hoffman, stated (Transcript, page 115) that the Bondholders Protective Committee would not offer any proof, but "stands on its reputation" and "adopt as supplementary proof of their services the testimony of Arnold Johnson, the secretary of the Committee," heretofore offered before Judge Barnes.

In its petition, said Committee, consisting of Charles S.

Tuttle, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, requested the allowance of "such amounts as may be found reasonable for the payment of expenses incurred by petitioners to City National Bank and Trust Company of Chicago for services rendered and personnel and facilities furnished to the Committee, for services rendered as Depositary and for the reimbursement of "out of pocket expenses" of said petitioners in the amount of $2,285.21.

C. F. Boerger:

Testified (Transcript, pages 126 to 149), on behalf of the Bondholders Protective Committee, as to the allowance asked for City National Bank and Trust Company of Chicago as Depositary and requested the allowance of a fee for said Depositary in the amount of $3,200.00.

William G. Sturm:

Testified (Transcript, pages 158 to 174), on behalf of the Bondholders' Protective Committee, and requested allowances of $10,000.00 for expenses incurred by said Com-
246 mittee to the City National Bank and Trust Company for "services, personnel and facilities" employed and utilized by the Committee, and $2,285.21 for reimbursement for "out of pocket expenses."

Vincent O'Brien, Esq.:

Testified (Transcript, pages 175 to 214) for the law firm of Defrees, Buckingham, Jones & Hoffman, attorneys for City National Bank and Trust Company of Chicago as Trustee under the first mortgage indenture and for the First Mortgage Bondholders Committee, and requested the allowance of a total fee of $30,000:00 with a credit or deduction of $5,500.00 for payments heretofore made, making a net amount of $24,500.00.

Compensation of Special Master.

As above stated, I attended all of the hearings in this matter and participated in the examination of witnesses. I have devoted ten hours to such hearings and to the preparation of this Report. I hereby certify that, in my opinion, a reasonable and customary fee for my services in said matter is the sum of $125.00. I further certify that, in my opinion, a reasonable and proportionate charge for the use of my office and for clerical and stenographic services is the sum of $25.00. I therefore respectfully request

that a total compensation of $150.00 be allowed me, of which $125.00 are for services and $25.00 for expenses.

On July 8, 1937, I filed a Report on the filing of claims and objections thereto and on acceptances of the Plan of Reorganization. In that Report I requested compensa-
247 tion in the amount of $85.00, of which $60.00 were for services and $25,00 for expenses. This amount has not been paid. I, therefore, respectfully request that your Honor enter an order allowing me total compensation in the amount of $235.00, of which $185.00 are for services and $50.00 are for expenses.

Fees of Court Reporter.

Mr. William J. Snyder took and transcribed the testimony in this matter and has rendered a bill for $150.25 which I find to be reasonable and recommend for allowance and payment.

Documents Transmitted.

All of the petitions for fees and expenses are transmitted herewith together with the Transcript of Testimony and the bill of the Court Reporter.

Mailing of Copies of This Report.

Copies of this Report have been mailed to the following:

Messrs. Mort D. and Frank Goldberg, Attorneys for Debtor, 11 South La Salle St., Chicago, Ill.

Frank McAllister, Esq., Attorney for Temporary Trustee, 1 North La Salle St., Chicago, Ill.

Samuel Micon, Esq., Attorney for Edwin Rosenberg, a creditor, 134 North La Salle St., Chicago, Illinois.

Messrs. Wagner, Lasky & Greenberg, Attorneys for Petitioning Creditors, 134 North La Salle St., Chicago, Ill.

Messrs. Defrees, Buckingham, Jones & Hoffman, Attorneys for Bondholders Committee, 105 So. La Salle St., Chicago, Ill.

248 Maurice M. Kraft, Esq., Attorney for holder of certain bond, 7 South Dearborn St., Chicago, Ill.

Respectfully submitted,
Carl R. Chindblom,
Carl R. Chindblom,
Referee in Bankruptcy, as Special Master.

Dated: Chicago, Illinois,
October 21, 1937.

249 And on, to wit, the 12th day of October, 1937, came the Protective Committee by its attorneys and filed in the Clerk's office of said Court its certain Petition in words and figures following, to wit: Filed Oct. 13. 1937.

250 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—65811) * *

PETITION.

Now comes the Protective Committee, acting under a certain Deposit Agreement dated April 25, 1933 with respect to the First Mortgage 6% Real Estate Gold Bonds of Debtor (the present members thereof being Charles S. Tuttle, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer) and respectfully represents unto the Court as follows:

1. That the Plan of Reorganization of the Debtor was confirmed by order entered herein on July 14, 1937 and that the above mentioned order directed the Committee forthwith to proceed to carry out and consummate the said Plan of Reorganization and counsel for the Committee was directed to forthwith proceed with the preparation of all indentures, agreements, documents, participation certificates, releases, satisfactions or other written instruments contemplated by the Plan of Reorganization or which may be necessary, convenient or advisable in connection with the consummation or execution of the said Plan of Reorganization.

2. That there has been prepared by counsel a form of Articles of Incorporation under which a new corpora-
251 tion shall be organized under the laws of the State of Illinois as the "Reorganized Company" pursuant to the said Plan of Reorganization, a copy of which form of Articles of Incorporation is attached hereto and marked Exhibit "A."

3. That there has been prepared by counsel a form of By-laws of the Reorganized Company to be so organized, a copy of which form of By-laws is attached hereto and marked Exhibit "B."

4. That there has been prepared by counsel a form of Trust Agreement under which the shares of stock of the Reorganized Company are to be held pursuant to said Plan of Reorganization, a copy of which form of Trust

Agreement is attached hereto and marked Exhibit "C."

5. That there has been prepared by counsel a form of Deed from the Trustee appointed in these proceedings to the Reorganized Company conveying and quitclaiming to the Reorganized Company all of the right, title and interest of the said Trustee in and to the real property of the Debtor, a copy of which form of Deed is attached hereto and marked Exhibit "D."

6. That there has been prepared by counsel a form of General Assignment and Assumption by and between the Trustee appointed in these proceedings and the Reorganized Company, a copy of which form of General Assignment and Assumption is attached hereto and marked Exhibit "E."

7. That there has been prepared by counsel a form of request from the Committee to the Successor Trustee under the Trust Deed dated September 1, 1928, securing the First Mortgage 6% Real Estate Gold Bonds of Debtor, requesting the said Successor Trustee under said Trust Deed to execute, acknowledge and deliver an instrument of release of said Trust Deed and a satisfaction of the decree entered in the Superior Court of Cook County, Illinois, on December 18, 1936, in cause No. 519151, a copy of which form of request is attached hereto and marked Exhibit "F."

252

8. That there has been prepared by counsel a form of request from the Committee to Charles H. Albers, as Receiver of Central Republic Trust Company, and Central Republic Trust Company, as Successor Trustee under Trust Deed dated September 1, 1928, securing the Second Mortgage 6% Real Estate Gold Bonds of Debtor, requesting said Charles H. Albers, as said Receiver, and Central Republic Trust Company, as said Successor Trustee, to execute, acknowledge and deliver an instrument of release of the said Trust Deed, a copy of which form of request is attached hereto and marked Exhibit "G."

9. That in the event the said Trustees, or either of them, shall fail, neglect or refuse, pursuant to said request, to so release said Trust Deeds, or either of them, and in the event the said Successor Trustee under the said Trust Deed dated September 1, 1928, securing the First Mortgage 6% Real Estate Gold Bonds of Debtor, shall fail, neglect or refuse to satisfy said decree, it will then be necessary for the Special Master heretofore appointed by this Court in said order entered July 14, 1937 to execute, acknowledge and deliver said release or re-

leases and said satisfaction; and that there has been prepared by counsel a form of said respective releases and said satisfaction, copies of which forms of releases and of satisfaction are attached hereto and marked
253 Exhibits "H" and "I," respectively.

10. That said Plan of Reorganization in Section C thereof provides that no participation certificates shall be issued to the holders of the securities, claims and interests referred to in said Section unless and until such holders shall surrender for cancellation to such agency as the Court shall approve for such purpose the securities and instruments of discharge and satisfaction of judgments as so specified therein; and it is necessary in order to consummate the said Plan of Reorganization that the Court make such approval.

Wherefore, your petitioners pray that an order be entered herein approving the form of said respective documents herein set forth as Exhibits hereto and granting such further relief as the Court may deem necessary in the premises.

Charles S. Tuttle,
Albert J. Peterson,
Lewis W. Riddle,
William G. Sturm and
E. A. Kilmer,
As the Committee Acting Under the Above Mentioned Deposit Agreement Dated April 25, 1933.

By Defrees, Buckingham, Jones & Hoffman,
Its Attorneys.

Dated October 13, 1937.

254

EXHIBIT "A."

Form B

Before Attempting to Execute These Blanks Be Sure to Read Carefully the Instructions on the Back Thereof.

(These Articles Must Be Filed in Duplicate.)

State of Illinois, } ss.
Cook County. }

To Edward J. Hughes, Secretary of State:

We, the undersigned,

Name	Number	Street	Address City	State
E. Toelle	105	South La Salle Street,	Chicago,	Illinois
E. Clark	105	South La Salle Street,	Chicago,	Illinois
L. Healy	105	South La Salle Street,	Chicago,	Illinois

being natural persons of the age of twenty-one years or more and subscribers to the shares of the corporation to be organized pursuant hereto, for the purpose of forming a corporation under "The Business Corporation Act" of the State of Illinois, do hereby adopt the following Articles of Incorporation:

Article One

The name of the corporation is: The Granada, Inc.

Article Two

The address of its initial registered office in the State of Illinois is: 77 West Washington Street, in the City of Chicago, County of Cook and the name of its initial Registered Agent at said address is: Weightstill Woods.

Article Three

The duration of the corporation is: Ninety-nine years.

255 Article Four

The purpose or purposes for which the corporation is organized are:

1. To own and operate a building or buildings and to engage in any and every business incidental thereto, including the operation, directly or indirectly, of restaurants, stores, shops, garages, concessions, and other like or unlike businesses, facilities and services.

2. To acquire, own, use, improve, convey and otherwise dispose of and deal in real property or any interest therein, without limitation.

3. To purchase, take, receive, lease as lessee, or otherwise acquire and to own, hold, use and dispose of any personal property, or any interest therein in connection with any or all of the foregoing purposes.

Article Five

Paragraph 1: The aggregate number of shares which the corporation is authorized to issue is 5364, divided into one class. The designation of each class, the number of shares of each class, and the par value, if any, of the shares of each class, or a statement that the shares of any class are without par value, are as follows:

Class	Series (If any)	Number of Shares	Par value per share or statement that shares are without par value
Common	None	5364	Without par value

Paragraph 2: The preferences, qualification, limitations, restrictions and the special or relative rights in respect of the shares of each class are:

All stock is of one class.

Article Six

The class and number of shares to be issued by the corporation before it shall commence business and the consideration (expressed in dollars) to be received by the corporation therefor, are:

Class of shares	Number of shares	Consideration to be received therefor,
Common	1000	$1000.00

Article Seven

The number of directors to be elected at the first meeting of the shareholders is: Five.

Article Eight

Paragraph 1: It is estimated that the value of all property to be owned by the corporation for the following year, wherever located, will be $1000.00.

Paragraph 2: It is estimated that the value of the property to be located within the State of Illinois during the following year will be $1000.00.

Paragraph 3: It is estimated that the gross amount of business which will be transacted by the corporation during the following year will be $1000.00.

Paragraph 4: It is estimated that the gross amount of business which will be transacted at or from places of business in the State of Illinois during the following year will be $1000.00.

.....
.....
.....
..... } Incorporators.
.....
.....
.....

Oath and Acknowledgment

State of Illinois, }
Cook County. } ss.

I, ..., a Notary Public, do hereby certify that on the ..... day of October, 1937, E. Toelle, E. Clark and L. Healy personally appeared before me and being first duly sworn by me severally acknowledged that they signed the foregoing document in the respective capacities therein set forth and declared that the statements therein contained are true.

In Witness Whereof, I have hereunto set my hand and seal the day and year above written.

.....

Notary Public.

Form B

Box..... File.....

Articles of Incorporation of The Granada, Inc.

The following fees are required to be paid at date of issuing certificate of incorporation: Initial license fee of 50c per $1000.00; filing fee $20.00; franchise tax of 1/20 of 1% of the amount of stated capital and paid-in surplus which the corporation is to receive for the shares issued before it commences business, provided for the issue of $200,000.00 or less the minimum franchise tax is as follows: January, $15; February, $14.17; March, $13.34; April, $12.50; May, $11.67; June, $10.84; July, $10.00; Aug., $9.17; Sept., $8.34; Oct., $7.50; Nov., $6.67; Dec., $5.84.

In excess of $20,000.00 the franchise tax per $1000.00 is as follows: Jan., $0.75; Feb., .709; March, .667; April, .625; May, .584; June, .542; July, .50; Aug., .4583; Sept., .4167; Oct., .3749; Nov., .3333; Dec., .2916.

All stock issued in excess of the amount represented in the Articles of Incorporation to be issued by the Corporation before it shall commence business must be reported within 60 days from date of issuance thereof and franchise tax and initial license fees paid thereon; otherwise, the corporation is subject to a penalty of 1% for each month on the amount until reported and subject to a fine not to exceed $500.00.

The same fees are required for a subsequent issue of stock except the filing fee is $1.00 instead of $20.00.

256 EXHIBIT "B."

By-Laws of The Granada, Inc.
an Illinois corporation

Article I

Offices

The principal office of the corporation in the State of Illinois shall be located in the City of Chicago, and County of Cook. The corporation may have such other offices, either within or without the State of Illinois as the business of the corporation may require from time to time.

Article II

Shareholders

Section 1. Annual Meeting. The annual meeting of the shareholders shall be held on the third Wednesday of January in each year, beginning with the year 1938, at the hour of 2:30 P. M., for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the board of directors shall cause the election to be held at a special meeting of the shareholders as soon thereafter as conveniently may be.

Section 2. Special Meetings. Special meetings of the shareholders may be called by the president, by the board of directors or by the holders of not less than one-fifth of all outstanding shares of the corporation.

Section 3. Place of Meeting. The board of directors may designate any place, either within or without the State of Illinois, as the place of meeting for any annual meeting or for any special meeting called by the board of directors. A waiver of notice signed by all shareholders may designate any place, either within or without the State of Illinois, as the place for the holding of such meeting. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the registered office of the corporation in the State of Illinois, except as otherwise provided in Section 5 of these by-laws.

Section 4. Notice of Meetings. Written or printed notice stating the place, day and hour of the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not
257 less than ten nor more than forty days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope addressed to the shareholder at his address as it appears

on the records of the corporation, with postage thereon prepaid.

Section 5. Meeting of all Shareholders. If all of the shareholders shall meet at any time and place, either within or without the State of Illinois, and consent to the holding of a meeting, such meeting shall be valid without call or notice, and at such meeting any corporate action may be taken.

Section 6. Closing of Transfer Books or Fixing of Record Date. The Board of directors of the corporation may close its stock transfer books for a period not exceeding forty and not less than ten days prior to the date of a meeting of shareholders, or the date for the payment of any dividend or for the allotment of rights, or the date when any exchange or reclassification of shares shall be effective; or in lieu thereof, may fix in advance a date, not exceeding forty and not less than ten days prior to the date of any meeting of shareholders or to the date for the payment of any dividend or for the allotment of rights, or to the date when any exchange or reclassification of shares shall be effective, as the record date for the determination of shareholders entitled to notice of, or to vote at, such meeting, or shareholders entitled to receive payment of any such dividend or to receive any such allotment of rights, or to exercise rights in respect of any exchange or reclassification of shares; and the shareholders of record on such date shall be the shareholders entitled to notice of and to vote at, such meeting, or to receive payment of such dividend or to receive such allotment of rights or to exercise such rights in the event of an exchange or reclassification of shares, as the case may be. If the transfer books are not closed and no record date is fixed by the board of directors, the date on which notice of the meeting is mailed shall be deemed to be the record date for the determination of shareholders entitled to vote at such meeting. Transferees of shares which are transferred after the record date shall not be entitled to notice of or to vote at such meeting.

Section 7. Voting Lists. The officer or agent having charge of the transfer book for shares of a corporation shall make, at least ten days before each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting, arranged in alphabetical order, with the address of, and the number of shares held by each, which list, for a period of ten days prior to such meeting,

shall be kept on file at the registered office of the corporation and shall be subject to inspection by any shareholders at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time
258 of the meeting. The original share ledger or transfer book, or a duplicate thereof kept in this state, shall be prima facie evidence as to who are the shareholders entitled to examine such list or share ledger or transfer book or to vote at any meeting of shareholders.

Section 8. Quorum. A majority of the outstanding shares of the corporation, represented in person or by proxy, shall constitute a quorum at any meeting of shareholders; provided, that if less than a majority of the outstanding shares are represented at said meeting, a majority of the shares so represented may adjourn the meeting from time to time without further notice.

Section 9. Proxies. At all meetings of shareholders, a shareholder may vote by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact. Such proxy shall be filed with the secretary of the corporation before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

Section 10. Voting of Shares. Each outstanding share, regardless of class, shall be entitled to one vote upon each matter submitted to a vote at a meeting of shareholders.

Section 11. Voting of Shares by Certain Holders. Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent or proxy as the by-laws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine.

Shares standing in the name of a deceased person may be voted by his administrator or executor, either in person or by proxy. Shares standing in the name of a guardian, conservator, or trustee may be voted by such fiduciary, either in person or by proxy, but no guardian, conservator, or trustee shall be entitled, as such fiduciary, to vote shares held by him without a transfer of such shares into his name.

Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the

transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

Section 12. Cumulative Voting. In all elections for directors, every shareholder shall have the right to vote, in person or by proxy, for the number of shares 259 owned by him, for as many persons as there are directors to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares shall equal, or to distribute them on the same principle among as many candidates as he shall see fit.

Section 13. Informal action by shareholders. Any action required to be taken at a meeting of the shareholders may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

Article III

Directors

Section 1. General Powers. The business and affairs of the corporation shall be managed by its board of directors.

Section 2. Number, Tenure and Qualifications. The number of directors of the corporation shall be five. Each director shall hold office for the term for which he is elected or until his successor shall have been elected and qualified. Directors need not be residents of Illinois or shareholders of the corporation.

Section 3. Regular Meetings. A regular meeting of the board of directors shall be held without other notice than this by-law, immediately after, and at the same place as, the annual meeting of shareholders. The board of directors may provide, by resolution, the time and place, either within or without the State of Illinois, for the holding of additional regular meetings without other notice than such resolution.

Section 4. Special Meetings. Special meetings of the

board of directors may be called by or at the request of the president or any two directors. The person or persons authorized to call special meetings of the board of directors may fix any place, either within or without the State of Illinois, as the place for holding any special meeting of the board of directors called by them.

Section 5. Notice. Notice of any special meeting shall be given at least two days previously thereto by written notice delivered personally or mailed to each director at his business address, or by telegram. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any director may waive notice of any meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business 260 to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

Section 6. Quorum. A majority of the board of directors shall constitute a quorum for the transaction of business at any meeting of the board of directors, provided, that if less than a majority of the directors are present at said meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

Section 7. Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors.

Section 8. Vacancies. Any vacancy occurring in the board of directors or in a directorship to be filled by reason of an increase in the number of directors, may be filled by election at an annual meeting or at a special meeting of shareholders called for that purpose. The director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

Section 9. Compensation. Directors as such shall not receive any stated salaries for their services, but by resolution of the board of directors, a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the board of directors; provided that nothing herein contained shall be construed to

preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

Article IV.

Officers.

Section 1. Number. The officers of the corporation shall be a president, one or more vice-presidents (the number thereof to be determined by the board of directors), a treasurer, a secretary and such other officers as may be elected in accordance with the provisions of this article. The board of directors, by resolution, may create the offices of one or more assistant treasurers and assistant secretaries, all of whom shall be elected by the board of directors. Any two or more offices may be held by the same person, except the offices of president and secretary.

Section 2. Election and Term of Office. The officers of the corporation shall be elected annually by the board of directors at the first meeting of the board of directors held after each annual meeting of shareholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Vacancies may be filled or new offices created and filled at any meeting of the board of directors. Each officer shall hold office until his successor shall have been duly chosen
261 and shall have qualified or until his death or until he shall resign or shall have been removed in the manner hereinafter provided.

Section 3. Removal. Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled for the unexpired portion of the term.

Section 5. President. The President shall be the principal executive officer of the corporation and shall in general supervise and control all of the business and affairs of the corporation. He shall preside at all meetings of the shareholders and of the board of directors. He may sign, with the secretary or any other proper officer of the corporation thereunto authorized by the board of directors, certificates for shares of the corporation, any deeds, mort-

gages, bonds, contracts, or other instruments which the board of directors have authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the board of directors or by these by-laws to some other officer or agent of the corporation, or shall be required by law or otherwise to be signed or executed; and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the board of directors from time to time.

Section 6. The Vice-Presidents. In the absence of the president or in the event of his inability or refusal to act, the vice-president (or in the event there be more than one vice-president, the vice-presidents in the order of their election) shall perform the duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions upon the president. Any vice-president may sign, with the secretary or an assistant secretary, certificates for shares of the corporation; and shall perform such other duties as from time to time may be assigned to him by the president or by the board of directors.

Section 7. The Treasurer. If required by the board of directors, the treasurer shall give a bond for the faithful discharge of his duties in such sum and with such security or securities as the board of directors shall determine. He shall: (a) have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for moneys due and payable to the corporation from any source whatsoever, and deposit all such moneys in the name of the corporation in such banks, trust companies or other depositaries as shall be selected in
262 accordance with the provisions of Article V of these by-laws; (b) in general perform all the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him by the president or by the board of directors.

Section 8. The Secretary. The Secretary shall: (a) keep the minutes of the shareholders' and of the board of directors' meetings in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these by-laws or as required by law; (c) be custodian of the corporate records and of the seal of the corporation and see that the seal of the corporation is affixed to all stock certificates prior to the issue thereof and to all documents, the execution of which on behalf of the corporation under its seal is duly authorized in accordance with the provisions of these by-laws; (d) keep a register

of the postoffice address of each shareholder which shall be furnished to the secretary by such shareholder; (e) sign with the president, or vice-president, certificates for shares of the corporation, the issue of which shall have been authorized by resolution of the board of directors; (f) have general charge of the stock transfer books of the corporation; (g) in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him by the president or by the board of directors.

Section 9. Assistant Treasurers and Assistant Secretaries. The assistant treasurers shall respectively, if required by the board of directors, give bonds for the faithful discharge of their duties in such sums and with such sureties as the board of directors shall determine. The assistant secretaries as thereunto authorized by the board of directors may sign with the president or a vice-president certificates for shares of the corporation, the issue of which shall have been authorized by a resolution of the board of directors, and in general shall perform such duties as shall be assigned to them by the treasurer or the secretary, respectively, or by the president or the board of directors.

Section 10. Salaries. The salaries of the officers shall be fixed from time to time by the board of directors and no officer shall be prevented from receiving such salary by reason of the fact that he is also a director of the corporation.

Article V.

Contracts, Loans, Checks, Deposits, etc.

Section 1. Contracts. The board of directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation and such authority may be general or confined to specific instances.

263 Section 2. Loans. No loans shall be contracted on behalf of the corporation and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the board of directors. Such authority may be general or confined to specific instances.

Section 3. Checks, Drafts, etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation, shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from

time to time be determined by resolution of the board of directors.

Section 4. Deposits. All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositaries as the board of directors may select.

Article VI.

Certificates for Shares and Their Transfer.

Section 1. Certificates for Shares. Certificates representing shares of the corporation shall be in such form as may be determined upon by the board of directors. Such certificates shall be signed by the president or a vice-president and by the secretary or an assistant secretary and shall be sealed with the seal of the corporation. All certificates for shares shall be consecutively numbered. The name of the person owning the shares represented thereby with the number of shares and date of issue shall be entered on the books of the corporation. All certificates surrendered to the corporation for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled, except that in case of a lost, destroyed or mutilated certificate a new one may be issued therefor upon such terms and indemnity to the corporation as the board of directors may prescribe.

Section 2. Transfer of Shares. Transfers of shares of the corporation shall be made only on the books of the corporation by the registered holder thereof or by his attorney thereunto authorized by power of attorney duly executed and filed with the secretary of the corporation, and on surrender for cancellation of the certificate for such shares. The person in whose name shares stand on the books of the corporation shall be deemed the owner thereof for all purposes as regards the corporation.

Article VII.

Fiscal Year.

The fiscal year of the corporation shall begin on the first day of January in each year and end on the thirty-
264 first day of December in each year.

Article VIII.

Dividends.

The board of directors may from time to time, declare, and the corporation may pay, dividends on its outstanding shares in the manner and upon the terms and conditions provided by law and its articles of incorporation.

Article IX.

Seal.

The board of directors shall provide a corporate seal which shall be in the form of a circle and shall have inscribed thereon the name of the corporation and the words "Corporate Seal, Illinois."

Article X.

Waiver of Notice.

Whenever any notice whatever is required to be given under the provisions of these by-laws or under the provisions of the articles of incorporation or under the provisions of the Business Corporation Act of the State of Illinois, waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Article XI.

Amendments.

These by-laws may be altered, amended, or repealed and new by-laws may be adopted at any meeting of the board of directors of the corporation by a majority vote of the directors present at the meeting.

265

EXHIBIT "C".

Granada Apartments Corporation Trust.
Stock Trust Agreement.

This Agreement, dated as of the ..... day of ....., A. D. 1937, by and between The Granada, Inc., an Illinois corporation (hereinafter sometimes called the "Corporation"), Party of the First Part; ....., ... and ....., as Trustees (hereinafter sometimes called the "Trustees"), Parties of the Second Part; and the holders from time to time of Participation Certificates issued and to be issued hereunder, Parties of the Third art,

Witnesseth That:

The Granada Apartments, Inc., an Illinois corporation, and the Debtor in the reorganization proceedings hereinafter mentioned, was the holder of record of the title to the following described real estate:

Lots Thirty-two (32) and Thirty-three (33) of Out Lot "C" in Wrightwood, a Subdivision of the South West quarter of Section Twenty-eight (28), Township Forty (40) North, Range Fourteen (14), East of the 3rd P. M., in Cook County, Illinois;

said real estate and the building thereon being herein sometimes called "Granada Apartments", which property was subject to the lien of the First Mortgage 6% Real Estate Gold Bonds (hereinafter sometimes called "Old Bonds") secured by a Trust Deed dated September 1, 1928, made by Granada Hotel Corporation, an Illinois corporation, to Chicago Trust Company, as Trustee.

266 Proceedings under Section 77B of the Bankruptcy Act as amended, for the reorganization of the Corporation, are now pending in the United States District Court for the Northern District of Illinois, Eastern Division (hereinafter sometimes called the "Court"), said proceedings being entitled "In the Matter of Granada Apartments, Inc., a corporation, Debtor. In Proceedings for Reorganization of a Corporation. In Bankruptcy. No. 65811."

By order entered in said proceedings on July 14, 1937, the Court confirmed and approved a certain Plan of Reorganization dated May 21; 1937, which Plan of Reorganization provides that the shares of stock of the New Company

to be issued thereunder are to be issued to and held and owned under a Trust Agreement by five Trustees.

The Court has duly approved the form of this Trust Agreement and the terms and provisions hereof, and the Trustees herein named, and said Trustees have consented to act under the Trust Agreement for the purposes herein provided.

It is a constituent part of the Plan of Reorganization and of the conditions and considerations upon which the Plan of Regoranzation was approved that this Trust Agreement shall be executed and delivered and the Participation Certificates hereinafter mentioned be issued from time to time as in this Trust Agreement provided, and this Agreement has been entered into for the benefit and protection of the creditors and stockholders of Corporation and the holders of Participation Certificates issued hereunder, as their interests may appear.

The Granada, Inc., as the "New Company" described in the Plan of Reorganization, is duly organized and existing under the laws of the State of Illinois with an authorized capital stock consisting of ..... shares without par value. All of said shares of stock to be presently issued have been or are about to be issued to the Trustees under the Plan of Reorganization and are to be held by them and subject to the provisions of this Agreement.

Now, Therefore, in consideration of the premises and the mutual covenants herein contained and other good and valuable considerations, the receipt whereof is hereby acknowledged, the several parties hereto mutually covenant and agree as follows:

1. The Trustees hereby become Trustees of the Trust created by this Agreement (herein sometimes called the "Trust") and hereby declare that they will hold all shares of capital stock deposited with them hereunder, all dividends thereon and distributions of capital in respect
267 thereof, all avails and proceeds arising from any sale or exchange thereof, and all other property which they may hereafter acquire as such Trustees, in trust, upon the terms and conditions hereinafter set forth, to manage and dispose of the same for the benefit of the holders from time to time of participation certificates evidencing shares in the Trust.

2. The Trustees will, upon delivery to them of shares of capital stock, issue or cause to be issued, participation certificates (herein sometimes called "Participation Certificates") evidencing shares in the Trust in the form here-

inafter provided. The total number of shares in the Trust shall not exceed the number of shares of capital stock deposited with the Trustees hereunder.

The shares in the Trust, evidenced by Participation Certificates, shall be personal property, and upon the death of any holder of a Participation Certificate the interest of such holder shall descend as personal property.

No holder of a Participation Certificate shall at any time have any claim, right, interest or title, legal or equitable, in or to assets and property at any time held by the Trustees under the Trust, but shall have an interest only in the net avails or proceeds thereof as and when distributed by the Trustees, and not otherwise.

The Trustees shall be fully protected in issuing and delivering Participation Certificates in accordance with the said Plan of Reorganization.

3. Participation Certificates are to be substantially in the form set forth in Exhibit A hereto attached.

The Trustees may, from time to time, make such changes in the form of Participation Certificates as the Trustees may deem advisable, provided that such changes shall not be substantially inconsistent with the substantive provisions of this Agreement.

The Trustees may execute any or all Participation Certificates, either in their own names (making appropriate changes in the form thereof for that purpose), or by the Depositary (hereinafter mentioned) as their agent, or by any agent designated by them, full power being hereby conferred upon the Depositary for that purpose.

4. The Trustees shall keep at the office of the Depositary suitable books for recording the transfer of Par-
268 ticipation Certificates, and any such Participation Certificate shall be transferable upon the said books by the registered holder thereof, or by his duly authorized agent or his legal representative, but only upon the surrender of such Participation Certificates to be transferred, duly endorsed.

Participation Certificates and any and all rights and interests of any holder thereof and title thereto shall be transferable by delivery thereof when duly assigned in writing by the registered holder thereof, either in person or by duly authorized agent, or by his legal representative, but until transferred on said books of the Trustees, the Trustees may treat the registered holder of any Participation Certificate for the times being hereunder as the owner thereof for all purposes whatsoever. The Trustees may

establish such rules and regulations in respect of transfers of Participation Certificates as they may deem advisable. Such books for the recording of transfers of Participation Certificates may be closed by the Trustees at any time (for periods not exceeding sixty (60) days) prior to any distribution in respect thereof or for the purposes of any action to be taken hereunder.

Any person becoming entitled to any share or shares in the Trust in consequence of the death, bankruptcy or insolvency of any holder of a Participation Certificate, or in any other way than by transfer as hereinabove provided, upon surrender of such Participation Certificate or Certificates evidencing such share or shares, and upon the production of such evidence of his title and such indemnity as may be required by the Trustees, shall be entitled to receive a new Participation Certificate or Participation Certificates evidencing such share or shares in the Trust.

5. In the event that any claim shall be made that any Participation Certificate issued hereunder has become mutilated or has been lost or destroyed, the Trustees may, in their uncontrolled discretion, issue in exchange for, and upon cancellation of the mutilated Participation Certificate, or in lieu of the Participation Certificate so claimed to have been lost or destroyed, a new Participation Certificate representing the same number of shares in the Trust upon the production of evidence of such mutilation, loss or destruction satisfactory to the Trustees, and upon receipt of indemnity satisfactory to the Trustees, and upon compliance also with such other reasonable regulations as the Trustees may prescribe.

269 6. Subject to the provisions and limitations in this Paragraph 6 contained, the Trustees shall have full power to take any action or give any consent with the same force and effect as if the Trustees were the absolute owners of the shares held in the Trust.

The Trustees may exercise all voting power incident to the shares held by them hereunder at elections of Directors and, except as hereinafter provided, upon all other matters presented at meetings of stockholders of the Corporation including (but without limiting the generality of the foregoing) proposals for the amendment in any respect whatsoever of the Articles of Incorporation of Corporation and for the merger and consolidation of the Corporation and the Corporation's property and assets. In connection with any amendment merger or consolidation, the Trustees shall have power to surrender the Certificates for shares held

hereunder and accept in lieu thereof Certificates for shares issued pursuant to such amendment, merger or consolidation. Before the Trustees may (a) sell or exchange the shares held by them hereunder, or (b) vote such shares in favor of, or give any consent with respect to any proposed sale of the Granada Apartments, or (c) amend this Agreement in a manner which in the judgment of the Trustees would materially and adversely affect substantial rights of the holders of Participation Certificates, notice shall be given to all holders of Participation Certificates summarizing the principal terms and conditions of the proposed sale. The Trustees shall not vote the stock in favor of such proposed sale, if within twenty (20) days from the date of the mailing of such notice, written objections thereto shall be filed with the Depositary by the holder or holders of Participation Certificates representing one-third or more of the outstanding shares in the Trust. The limitations in this Section 6 contained on voting the capital stock of the Corporation deposited hereunder in favor of a sale of the Granada Apartments shall not apply to voting such capital stock in favor of any mortgage of, or the creation of any lien on, or the leasing of the Granada Apartments or any property used in connection therewith.

The Trustees shall have power to sell, exchange or contract to sell or exchange all or any part of the shares held by them hereunder, except as herein otherwise specifically provided, for cash or other property, and, if so desired, upon credit.

No person shall be required to see to the application of any moneys or property paid, assigned, conveyed or delivered to the Trustees.

270 The Trustees shall not have any power or authority to borrow money on the credit or on behalf of the holders of Participation Certificates personally, or of the Trustees individually, or to make any contract binding the holders of Participation Certificates personally, or the Trustees individually, or to incur any obligations against the holders of Participation Certificates personally, or the Trustees individually, and no holder of any Participation Certificate as such shall have any liability whatsoever on account of any obligations or liabilities of the Trust of whatsoever kind or character, or on account of any action of the Trustees hereunder.

7. Subject to expenses and prior charges, if any, all cash dividends which shall be received by the Trustees in respect of any shares of capital stock of any corpora-

tion constituting part of the Trust property, all cash received by the Trustees as a return of capital in respect of any such shares of capital stock, and all other cash income of the Trust Property shall be distributed by such Trustees at such time or times as may be designated by the Trustees among the holders (of record on the date of payment of such dividends, or date of receipt of such other cash, or of record on such other date as the Trustees in their sole discretion shall determine) of Participation Certificates pro rata, according to the number of their shares in the Trust.

8. Upon the termination of the Trust, the Trustees forthwith shall proceed to close up the affairs of the Trust and to convert all of the assets of the Trust into money, stocks, bonds or other like or unlike securities, as soon as practicable and within two (2) years, and to distribute the same as provided herein.

While engaged in closing the affairs of the Trust, the Trustees shall have each and every power possessed by them during the term of the Trust and the decisions, contracts and acts of the Trustees by any two or more of their number during the period for closing the affairs of the Trust shall be of the same force and effect as if made or done during the term of the Trust.

9. As soon as practicable after the termination of the Trust, the Trustees, upon surrender of any Participation Certificates then outstanding, will, on payment, if the Trustees shall so require, of a sum sufficient to reimburse them for any stamp tax or other governmental or other charge in connection with such delivery, deliver or cause to be delivered to the holders of Participation Certificates, at the office of the Depositary, such proportionate amount of the Trust Property, in cash or in kind, as the number of shares in the Trust evidenced by the respective Participation Certificates so surrendered shall bear to
271 the entire number of shares in the Trust then outstanding.

Whenever, pursuant to the foregoing provisions of this Section 9, the Trust Property shall become deliverable, or at any time thereafter, the Trustees may deposit with any bank or trust company in the City of Chicago, Illinois, the Trust Property so deliverable, accompanied, if necessary, by proper instruments of assignment and transfer in blank, duly executed, with authority to such bank or trust company to make delivery of such Trust Property upon surrender of such Participation Certificates and

upon payment of any tax or charge payable upon such delivery, as above specified. Thereupon, all further obligation or duty of the Trustees under this Agreement shall terminate.

10. The Trustees shall have power, in their uncontrolled discretion, by the action of a majority of such Trustees, to terminate this Agreement and the Trust hereby created at any time. A copy of the resolution or instrument declaring such termination shall be filed with the Depositary and a notice thereof given to holders of Participation Certificates.

This Agreement and the Trust hereby created may also be terminated at any time by written directions signed by a majority in number of the holders of Participation Certificates then outstanding hereunder, which Participation Certificates must also represent a majority in number of the whole shares in the Trust, provided that, to be effective, such written directions shall fix the date of such termination and shall be filed with the Depositary at least thirty (30) days prior to the date so fixed for such termination.

Within sixty (60) days prior to the completion of each two-year period during the continuation of the Trust, beginning with the two-year period commencing on the date of this Agreement, the question of the termination of this Agreement and the Trust hereby created shall be submitted to a vote of the holders of Participation Certificates, either at a meeting called for that purpose, at which such holders may be represented in person or by proxy, or by mail ballot, and if the holders of Participation Certificates representing a majority of the Participating Shares in the Trust hereby created, who are also a majority of the holders of Participating Shares in the Trust hereby created, shall at any such meeting, or on or before the date set by the Trustees for the completion of such a vote by mail ballot vote in favor of its termination, this Agreement and the Trust hereby created shall terminate on the first day of the next calendar month after the date of the completion of such vote.

272

Notice of any such termination of this Agreement shall be given to all holders of Participation Certificates.

Unless previously terminated by action of the Trustees in their absolute discretion, as provided in this Section 10, this Agreement shall continue in full force and effect to and including ....., 1947, unless this

Agreement shall have theretofore been extended pursuant to the provisions of Section 17 hereof.

11. Any Trustee may at any time resign by delivering to the other Trustees at the office of the Depositary his resignation in writing to take effect ten (10) days thereafter, or upon its earlier acceptance by the Trustees. By unanimous vote of all of the Trustees at any time acting hereunder, the number of Trustees may be increased or decreased to such number as the Trustees may desire. In case of increase in the number of Trustees, the additional Trustees shall be appointed by a vote or action of a majority of the then Trustees.

In the event of the death, resignation or inability of any Trustee to act as Trustee, or of a vacancy in the office of any such Trustee arising from any cause, the vacancy so occurring shall be filled by the appointment of a successor trustee to be named by the remaining Trustee or Trustees, by a written instrument filed with the Depositary.

In the event of any vacancy or vacancies among the Trustees, all the rights, powers, duties and discretions of the Trustees during such vacancy may be exercised at any time and from time to time and until the filling of any vacancy or vacancies, by the remaining Trustees, if only two, or by the remaining Trustee, if only one.

The term "Trustees" as used in this Agreement and in all Participation Certificates issued hereunder shall apply to the Trustees as originally constituted and to their successors. Notwithstanding any change in the Trustees, the Trustee for the time being may adopt and issue Participation Certificates in the names of the original Trustees.

Succeeding Trustees shall have the same rights, titles, powers, privileges and immunities as the Trustees herein named, without necessity for assignment, transfer or conveyance of any assets or property of the Trust.

273 When any Trustee shall cease to be a Trustee hereunder, for any reason, such retiring Trustee and his heirs, executors, administrators, assigns and representatives shall convey all property, real, personal or mixed, belonging to the Trust by deeds, assignments or bills of sale, without covenants, to the remaining and succeeding Trustees, but the title and tenure of the Trustees shall be of a joint nature (with right of survivorship) and not common.

The Corporation hereby agrees to pay and discharge

all expenses and liabilities, whether arising in tort or contract, incurred by the Trustees in connection with the Trust, as well as reasonable compensation for their services hereunder; such aggregate annual compensation of the Trustees shall not exceed, however, one per cent (1%) of the gross annual income of the Corporation, provided, however, that if the Trustees elect one of their number to be managing Trustee, he may be paid and receive a further additional reasonable compensation, but such that his total compensation shall not exceed the Chicago Real Estate Board rate for like services, and provided that in any event the Trustees shall be entitled to hold and resort to the Trust Property for the payment and discharge of any such expenses and liabilities, including such reasonable compensation.

12. The action of the majority of the Trustees, expressed from time to time at a meeting, or by writing without a meeting, shall, except as otherwise in this Agreement stated, constitute the action of the Trustees and have the same effect as if assented to by all. At a meeting of the Trustees, any Trustee may vote in person or by proxy to any other person (who may be a Trustee) and any Trustee may give a power of attorney to any other person (who may be a Trustee) to sign for him in case of action of the Trustees taken in writing without a meeting. The Trustees may adopt their own rules and procedure. Any Trustee may act as a director or officer of the Corporation or any other corporation, the shares of which constitute a part of the Trust Property, and he, or any firm of which he may be a member, or any corporation of which he may be a stockholder, director, officer or employee, may, to the extent permitted by law, contract with the Corporation, or such other corporation, or with the Trustees or be or become pecuniarily interested in any matter or transaction with which the Corporation, or such other corporation, or the Trust may in any way be concerned as fully as though he were not acting as such Trustee.

The Trustee may buy or sell to, and deal with or hire, the holder of any Participation Certificate in the same manner and with the same effect as if such holder were a stranger.

Any Trustee, or any firm or corporation with which he is associated or in which he is interested, may hold

and acquire individually any shares in the Trust without disqualifying himself or affecting the exercise by him of any and all powers conferred in this Agreement.
274 Any Trustee or Trustees, or any such firm of corporation, may buy or sell shares in the Trust in the same manner as if he or they were not Trustees.

13. The Trustees may, in this discretion, advise with counsel and anything done or suffered in good faith by the Trustees or the Depositary, in accordance with the opinion of counsel, shall be conclusive in favor of the Trustees or such Depositary, and upon all holders of Participation Certificates and all other interested parties. No Trustee shall incur any responsibility by reason of any error of judgment or of law or of anything done or omitted to be done under this Agreement, except his own wilful malfeasance.

The responsibility and liability of the Trustees hereunder in respect of shares of stock or other Trust Property held by them as Trustees hereunder shall be that of Trustees only, and no responsibility or liability in respect of said shares or other Trust Property shall in any manner attach to the Parties of the Third Part in their individual capacity.

14. Any notice to be given to the holders of Participation Certificates shall be sufficiently given if mailed, postage prepaid, addressed to the holders of record of Participation Certificates as shown on the books of the Trustees at the close of business on the business day next preceding that on which such notice shall be mailed at the addresses furnished by such holders to the Trustees or to the Depositary; or, if no address has been given, then addressed in care of General Delivery, Chicago, Illinois. Any notice, when given by the Trustees as above provided, shall be taken and considered as though personally served upon all holders of Participation Certificates issued hereunder, and such notice shall be the only notice required to be given under any of the provisions of this Agreement. Any notice given to a holder of a Participation Certificate shall be effective and any action pursuant thereto shall be binding upon such holder regardless of any legal or other disability of such holder or any person in any way interested in such Participation Certificate.

15. Any request or other instrument required or per-

mitted by this Agreement to be signed or executed by the holders of Participation Certificates may be in any number of concurrent instruments of similar tenor, and may be executed by such holders in person or by an agent or attorney appointed by an instrument in writing. The fact and date of the execution by any person so making such request or other instrument in writing, or of a writing appointing any such agent or attorney, may be proved by the certificate of any notary public or other officer authorized to take, either within or without the State of Illinois, acknowledgments of conveyances of real estate, certifying that the person signing such request or other instrument acknowledged to him the execution thereof, and a certificate as aforesaid shall be conclusive in favor of the Trustees with respect to any and all action taken by the Trustees pursuant to such request or other instrument.

16.

is hereby appointed Depositary (herein sometimes called "Depositary") for the purposes of this Agreement. The Trustees may deposit certificates for shares of capital stock of any corporation or any other personal property at any time constituting part of the Trust Property with such Depositary, and shall be under no liability for any loss of such property, so deposited by the Depositary.

The expenses incurred by the Depositary in the performance of its duties hereunder and its reasonable compensation shall constitute an expense of the Trustees payable by the Corporation in accordance with the provisions of Section 11 hereof, or, in default of such payment by the Corporation, then payable out of the Trust Property before any distribution thereof is made to holders of Participation Certificates.

No Depositary hereunder shall be liable or responsible to anyone for any action taken or suffered to be taken in good faith, or for anything other than its own wilful malfeasance, and no Depositary shall incur any liability by reason of anything done or permitted to be done at the request, or at the direction, of the Trustees, and any Depositary shall be fully protected in all cases in acting upon the written directions, or with the written approval of a majority of the Trustees.

Any Depositary may at any time resign hereunder by delivering to the Trustees its resignation in writing, to

take effect ten (10) days thereafter, unless sooner accepted by the Trustees. Any Depositary may be removed at any time by the Trustees by delivering to such Depositary a written notice of removal, signed by all of the Trustees, to take effect not less than ten (10) days thereafter, unless sooner acquiesced in by the Depositary. In case, at any time, any Depositary shall resign or shall be removed, or otherwise shall be incapable of acting hereunder, a successor may be appointed by the Trustees by written appointment filed with such successor Depositary. Upon the appointment of any successor Depositary, all rights, powers and duties of such retiring Depositary hereunder shall immediately vest in such successor Depositary without any further act; but such retiring Depositary forthwith, upon the written request of such successor Depositary upon payment of any liabilities constituting a charge thereon, shall deliver to such successor Depositary all securities, moneys and property of every kind held by the retiring Depositary hereunder.

The term "Depositary," as used in this Agreement, shall include any such successor Depositary for the time being acting hereunder.

17. The Trustees may, at any time by written instrument duly signed by all of the Trustees and delivered to the Depositary, make any addition, alteration or amendment to this Agreement, and any such addition, alteration or amendment, so made, shall have the same force and effect as if made by instrument executed by all of the parties hereto and by all holders of Participation Certificates at the time outstanding hereunder; provided, however, that no such addition, alteration or amendment which, in the judgment of the Trustees, materially and adversely affects substantial rights of holders of Participation Certificates shall be made, if upon prior notice in writing thereof, which shall be given to the holders of all Participation Certificates then outstanding hereunder, the holders of Participation Certificates covering at least one-third of the whole number of Participating Shares in the Trust then outstanding hereunder, shall, in writing filed with the Depositary within twenty (20) days after the date of the mailing of such notice, object to or dissent from any such proposed addition, alteration or amendment. Any holder of Participation Certificates who shall not, within the time and in the manner aforesaid, have objected to or dissented from any such proposed addition,

alteration or amendment shall be conclusively deemed to have consented to the same. No addition, alteration or amendment to this Agreement shall be made which shall materially change or alter the duties, rights, powers or limitations of liability of the Depositary without its consent thereto in writing.

If any proposed addition, alteration or amendment of this Agreement shall involve an extension of the term thereof, then notwithstanding anything to the contrary herein contained, any holder of Participation Certificates objecting to such extension in the manner hereinbefore provided shall be entitled to receive, upon the date fixed for the termination of this Agreement prior to the adoption of such proposed extension, such proportionate amount of the Trust Property, in cash or in kind, as the number of shares in the Trust evidenced by such Participation Certificates shall bear to the total number of shares in the Trust then outstanding, but only upon sur-
277 render of such Participation Certificates to the Depositary and upon payment of an amount sufficient to reimburse the Trustees for any stamp tax or other governmental charge in connection with such distribution.

18. A copy of this Agreement shall be filed with the Depositary and, together with the records of the Depositary, as such Depositary, shall be open to the inspection of any registered holder of a Participation Certificate and of the Corporation and its agents or attorneys duly authorized in writing during business hours, upon the furnishing by any applicant of satisfactory identification.

19. This Agreement shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the parties here to and any and all persons claiming through or under any of them.

20. This document may be executed in any number of counterparts, all of which shall be construed as one instrument.

In Witness Whereof, the Granada, Inc., has caused this Agreement to be signed in its name and behalf by its President or its Vice President and its corporate seal to be hereunto affixed and attested by its Secretary, and the Trustees named herein have hereunto set their hands and seals in token of their acceptance of the Trust hereby created, and ....., to evidence its acceptance of its appointment as Depositary hereunder, has caused this Agreement to be signed in its name and

behalf by its Vice President and its corporate seal
278 to be hereunto affixed and attested by its Assistant
. Trust Officer, all as of the day and year first above written.

The Granada, Inc., a corporation,
By .....
President.

Attest:
.....
Secretary.

.....(Seal)
.....(Seal)
.....(Seal)
As Trustees.

.....
a corporation.
By .....
Vice President.

Attest:
.....
Secretary.

279 EXHIBIT A.

Form of Participation Certificate.

Certificate Number .... Shares

The Granada, Inc., a Corporation.
(A Trust Estate.)

This Is To Certify That .....
is the owner of ..... shares in the Trust created by a certain Trust Agreement dated the ..... day of ....., A. D. 1937, which was entered into by and between the Granada, Inc., an Illinois corporation; ....., ... and ....., as the Trustees initially constituted by said Trust Agreement, and the holders from time to time of Participation Certificates issued and to be issued from time to time thereunder, which said Trust Agreement is hereby made a part hereof and to which reference is made for the terms and conditions thereof and for the obligations imposed and the rights given hereby. This Certificate is issued against the deposit of a number

of shares of the capital stock, without par value, of said The Granada, Inc., equal to the number of shares in said Trust represented by this Certificate.

The Holder or owner of this Certificate, by taking this Certificate, assents to and agrees to be bound by the terms and provisions of said Trust Agreement. The holder or owner of this Certificate shall at no time have any right, title or interest, legal or equitable, in or to any assets or property of whatsoever nature at any time held by the Trustees under the Trust created by said Trust Agreement, but shall have an interest only in the net avails or proceeds thereof, as provided in said Trust Agreement.

Subject to the terms hereof and of said Trust Agreement, the interest evidenced by this Certificate is transferable, but only upon the surrender of this Certificate for cancellation, properly endorsed by the assignor in the form provided therefor on the reverse hereof and upon the issuance of a new certificate or certificates in lieu hereof.

The attention of every prospective assignee of this Certificate and of the shares in the Trust created under said Trust Agreement, which are evidenced hereby is specifically directed to the provisions of said Trust Agreement concerning the right and duty of the Trustees and of all persons to treat the person whose name appears as the owner hereof on the records kept by the Trustees as
280 the owner of this Certificate and of the shares in the Trust created by said Trust Agreement evidenced hereby and as entitled to all the benefits accruing to such owner, irrespective of any notice to the contrary, until this Certificate, properly endorsed as above provided, is surrendered to the Trustees for cancellation.

In Witness Whereof, the said Trustees have caused this Participation Certificate to be signed by their duly appointed agent on .....

.....

.....

.....

Trustees,

By their duly appointed Agent,

.....

Depositary,

By .....

Authorized Signature.

The Form of blank endorsement for assignment on the reverse of Participation Certificates shall be as follows:

Form of Endorsement by Assignor.

(On Reverse of Certificate)

For Value Received, the undersigned hereby sells, assigns, transfers and sets over unto .....
of ....., in the State of .....,
all right, title and interest, of the undersigned in and to the within Certificate and the benefits evidenced thereby, and hereby authorizes the Trustees therein referred to to cancel the within Certificate and to issue a certificate or certificates in lieu thereof to said assignee(s).

Dated this ..... day of ....., A. D. 193....

.....(Seal)

Witness:

.....

281 EXHIBIT "D".

22120—FWB:LH-10-12-37

Deed.

Know All Men By These Presents, that

Whereas, by order of court entered May 17, 1937 in proceedings pending in the District Court of the United States, for the Northern District of Illinois, Eastern Division, under Section 77B of the Bankruptcy Act, as amended, in a cause entitled "In the Matter of Granada Apartments, Inc., a corporation, Debtor, No. 65811," Weightstill Woods was temporarily appointed Trustee of all of the property and assets of said Granada Apartments, Inc., and the said Weightstill Woods subsequent thereto has been and now is Trustee as aforesaid; and

Whereas, a Plan of Reorganization of said Granada Apartments, Inc., was confirmed by order of said Court on July 14, 1937, which said Plan of Reorganization provided in part that all property and assets of Debtor shall be conveyed, transferred and assigned to a new corporation free and clear of all claims, of creditors and stockholders of the Debtor except as otherwise provided in the said Plan of Reorganization; and

Whereas, pursuant to order of said Court entered October ....., 1937 a new corporation named "The Granada, Inc." has been organized under the laws of the State of

Illinois for the purpose of consummating said Plan of Reorganization, and Weightstill Woods, as said Trustee, by said order was authorized and directed to convey and transfer all of his right, title and interest in and to the property and assets of said Debtor to said new corporation:

Now, Therefore, Weightstill Woods, as Trustee as aforesaid, for and in consideration of the premises and pursuant to the said Plan of Reorganization and pursuant to said order of said Court entered October ....., 1937, conveys and quitclaims to The Granada, Inc., an Illinois corporation, its successors and assigns all his right, title and interest in and to the following described property:

Lots, thirty-two (32) and thirty-three (33) of Outlot "C" in Wrightwood, a Subdivision of the Southwest Quarter of Section twenty-eight (28), Township forty (40) North, Range fourteen (14), East of the Third Principal Meridian, in Cook County, Illinois,

together with all improvements thereon and appurtenances thereunto belonging.

In Witness Whereof, the said Weightstill Woods has hereunto set his hand and seal this ..... day of ...., A. D., 1937.

.....(Seal)
As Trustee of Granada Apartments, Inc., as aforesaid.

282 State of Illinois } ss.
County of Cook }

I, ..., a Notary Public in and for the County and State aforesaid, Do Hereby Certify that Weightstill Woods, personally known to me to be the same person whose name is subscribed to the foregoing instrument as Trustee, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this ..... day of ....., 1937.

.....
Notary Public.

283 EXHIBIT "E."

General Assignment and Assumption.

This Agreement made this ..... day of ....., A. D., 1937, by and between Weightstill Woods, Party of the First Part, and The Granada, Inc., an Illinois corporation (hereinafter sometimes called "Reorganized Company"), Party of the Second Part,

Witnesseth:

Whereas, Weightstill Woods, Party of the First Part, has heretofore been appointed as Trustee of the property and assets of Granada Apartments, Inc., an Illinois corporation, the Debtor (hereinafter called "Debtor"), in proceedings pending in the District Court of the United States, for the Northern District of Illinois, Eastern Division, in a cause entitled "In the Matter of Granada Apartments, Inc., a corporation, Debtor, No. 65811;" and

Whereas, a certain Plan of Reorganization of the Debtor has been heretofore confirmed in said proceedings by order entered therein on July 14, 1937, which said Plan of Reorganization provided in part that all of the property and assets of the Debtor shall be conveyed, transferred and assigned to a new corporation, free and clear of all claims of creditors and stockholders of the Debtor, except as otherwise provided in the said Plan of Reorganization; and

Whereas, pursuant to order entered in said proceedings on October ....., 1937, a new corporation, Party of the Second Part herein, has been organized for the purpose of consummating said Plan of Reorganization:

Now, Therefore, said Weightstill Woods, Party of First Part, as Trustees as aforesaid, for and in consideration of the premises and of the covenants and agreements of the Reorganized Company hereinafter contained and pursuant to the said Plan of Reorganization and pursuant to the said orders entered in said proceeding on July 14, 1937 and October ....., 1937, has conveyed, assigned, transferred and set over and does hereby convey, assign, transfer and set over unto The Granada, Inc., an Illinois corporation, Party of the Second Part, its successors and assigns, all of his right, title and interest as Trustee aforesaid in and to all and singular the property, rights and assets of said Granada Apartments, Inc., of every name and description, real, personal and mixed, of whatever nature and where-

soever situate, or in which he may have any interest or to which he may be entitled.

This Agreement further witnesseth that The Granada, Inc., Party of the Second Part, its successors and assigns, in consideration of the said conveyance, transfer and assignment, hereby covenants and agrees to and with the said Weightstill Woods, Party of the First Part, as said Trustee, to take and receive said property and assets of said Granada Apartments, Inc., subject (and subject only)
284 to all claims, liabilities and obligations to be assumed by the Reorganized Company, pursuant to and as provided for and in said Plan of Reorganization and said order confirming said Plan of Reorganization; and the Reorganized Company hereby assumes all such claims, liabilities and obligations and covenants and agrees to pay, perform and discharge the same in the manner and as provided for in said Plan of Reorganization and said order confirming said Plan of Reorganization.

In Witness Whereof, Weightstill Woods, as Trustee, Party of the First Part, has hereunto set his hand and seal, and the Reorganized Company, Part of the Second Part, has caused these presents to be executed by its President and attested by its Secretary and its corporate seal to be hereunto affixed, all as of the day and year first above written.

.....(Seal)
Trustee, Party of the First Part.

The Granada, Inc., an Illinois corporation, Party of the Second Part,

By.....
President.

Attest:

.....
Secretary.

State of Illinois, } ss.
County of Cook. }

I, ..., a Notary Public in and for the County and State aforesaid, Do Hereby Certify that Weightstill Woods, personally known to me to be the same person whose name is subscribed to the foregoing instrument, as Trustee, appeared before me this day in person and acknowledged that he signed, sealed and delivered

the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this ..... day of ....., A. D., 1937.

.....

Notary Public.

285 State of Illinois, } ss.
County of Cook. }

I, ..., a Notary Public in and for the County and State aforesaid, Do Hereby Certify that ....., personally known to me to be the President of The Granada, Inc., and ...., personally known to me to be the Secretary of said Corporation, whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Secretary they signed and delivered the said instrument as President and Secretary of said corporation and caused the corporate seal of said corporation to be affixed thereto, as their free and voluntary act and as the free and voluntary act of said Corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this ..... day of ..... A. D., 1937.

.....

Notary Public.

286 EXHIBIT "F."

....., 1937.

City National Bank and Trust Company,
208 South La Salle Street,
Chicago, Illinois.

Re: Granada Apartments, Inc.

Gentlemen:

Pursuant to the Plan of Reorganization of Granada Apartments, Inc., an Illinois corporation, confirmed by order entered July 14, 1937 in proceedings pending in the District Court of the United States, for the Northern District of Illinois, Eastern Division, in a cause entitled "In the Matter of Granada Apartments, Inc., a corporation, Debtor, No. 65811" and pursuant to order entered in said

proceedings on October ....., 1937, the undersigned hereby request you, as Successor Trustee under Trust Deed dated September 1, 1928 from Granada Hotel Corporation, an Illinois corporation, to Chicago Trust Company, said Trust Deed being recorded in the office of the Recorder of Deeds of Cook County, Illinois, on October 1, 1928, as Document 10161996, to execute, acknowledge and deliver to the undersigned an instrument of release of said Trust Deed and any and all supplements thereto and an instrument of satisfaction of the decree of foreclosure entered on December 18, 1936, in the Superior Court of Cook County, Illinois, in proceedings entitled "William Thuma, complainant, *vs.* Granada Hotel Corporation, a corporation, et al., defendants, No. 519151."

Charles S. Tuttle,
Albert J. Peterson,
Lewis W. Riddle,
William G. Sturm,
E. A. Kilmer,
Constituting the Bondholders' Protective Committee under Deposit Agreement dated April 25, 1933,

By.....
Duly Authorized.

287 EXHIBIT "G."

....., 1937.

Central Republic Trust Company and
Charles H. Albers, as Receiver of
Central Republic Trust Company,
134 South La Salle Street,
Chicago, Illinois.

Re: Granada Apartments, Inc.

Gentlemen:

Pursuant to the Plan of Reorganization of Granada Apartments, Inc., an Illinois corporation, confirmed by order entered July 14, 1937, in proceedings pending in the District Court of the United States, for the Northern District of Illinois, Eastern Division, in a cause entitled "In the Matter of Granada Apartments, Inc., a corporation, Debtor, No. 65811" and pursuant to order entered in said proceedings on October ....., 1937, the undersigned hereby request you, as Successor Trustee, under Trust Deed dated

September 1, 1928 from Granada Hotel Corporation, an Illinois corporation, to Chicago Trust Company, as Trustee, said Trust Deed being recorded on October 1, 1928, in the office of the Recorder of Deeds of Cook County, Illinois, as Document 10162332, to execute, acknowledge and deliver to the undersigned an instrument of release of said Trust Deed and any and all supplements thereto.

Charles S. Tuttle,
Albert J. Peterson,
Lewis W. Riddle,
William G. Sturm,
E. A. Kilmer,
Constituting the Bondholders' Protective Committee under Deposit Agreement dated April 25, 1933,

By.....
Duly Authorized.

288 EXHIBIT "H".

Release.

Know All Men By These Presents that

Whereas, Granada Hotel Corporation, an Illinois corporation, made, executed and delivered its certain Trust Deed dated September 1, 1928 to Chicago Trust Company, as Trustee, to secure its First Mortgage 6% Real Estate Gold Bonds in the principal amount of Five Hundred Twenty-five Thousand Dollars ($525,000), which said Trust Deed was recorded in the office of the Recorder of Deeds of Cook County, Illinois, on October 1, 1928, as Document 10161996; and

Whereas, said Granada Hotel Corporation made, executed and delivered its certain Supplemental Trust Deed dated September 1, 1928 and recorded in the office of the Recorder of Deeds of Cook County, Illinois, on October 1, 1928, as Document 10161997; and

Whereas, the title to the property conveyed by said Trust Deed has been acquired by Granada Apartments, Inc., an Illinois corporation; and

Whereas, a Plan of Reorganization of said Granada Apartments, Inc., was confirmed on July 14, 1937 by order entered in proceedings in the District Court of the United States, for the Northern District of Illinois, Eastern Division, entitled "In the Matter of Granada Apartments, Inc., a corporation, Debtor, No. 65811," which said Plan of Re-

organization provided in part that the Successor Trustee under said Trust Deed should execute and deliver an instrument of release thereof and should execute and deliver an instrument of satisfaction of the decree of foreclosure entered on December 18, 1936 in proceedings pending in the Superior Court of Cook County, Illinois, in cause No. 519151; and

Whereas, City National Bank and Trust Company of Chicago, a corporation, as Successor Trustee under said Trust Deed, was directed by order entered in said proceedings on July 14, 1937, to execute and deliver said instrument of release of said Trust Deed and instrument of satisfaction of said decree upon written request so to do from Charles S. Tuttle, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, presently constituting the Protective Committee, acting under a certain Deposit Agreement dated April 25, 1933, with respect to the said First Mortgage 6% Real Estate Gold Bonds of said Granada Apartments, Inc.; and

Whereas, said order further provided that if within five (5) days from the date of receipt of said written request from the Committee as aforesaid, said City National Bank and Trust Company of Chicago, as said Successor Trustee, shall fail, refuse or neglect to execute, acknowledge or deliver such instrument of release of said Trust Deed and an instrument of satisfaction of said decree, then and 289 in that event Carl R. Chindblom be and is appointed Special Master in said proceeding for the purpose of executing, acknowledging and delivering said release and said satisfaction; and said Carl R. Chindblom, as Special Master, be and is authorized and empowered to execute, acknowledge and deliver such instrument releasing said Trust Deed and satisfying said decree and to do any and all acts necessary or proper in connection therewith; and

Whereas, the said request having been duly given to the City National Bank and Trust Company of Chicago, as Successor Trustee, as provided for in said order, and the said City National Bank and Trust Company of Chicago, as said Successor Trustee, having failed to execute and deliver said release of said Trust Deed and satisfaction of said decree as so directed in said order:

Now, Therefore, for and in consideration of the premises and pursuant to the said Plan of Reorganization and the direction contained in the said order entered in the proceedings above referred to, Carl R. Chindblom, as Special Master, does

(a) Hereby remise, release and quitclaim unto Granada Hotel Corporation, an Illinois corporation, all the right, title, claim or demand whatsoever which City National Bank and Trust Company of Chicago, as Successor Trustee, may have acquired in, through or by a certain Trust Deed bearing the date the 1st day of September, 1928 and recorded in the office of the Recorder of Deeds of Cook County, Illinois, on the 1st day of October, 1928, as Document 10161996 (and any and all indentures supplemental thereto) in and to the premises described therein, to wit:

Lots thirty-two (32) and thirty-three (33) of Outlot "C" in Wrightwood, a Subdivision of the Southwest Quarter of Section twenty-eight (28), Township forty (40) North, Range fourteen (14), East of the Third Principal Meridian, in Cook County, Illinois,

together with all improvements thereon and appurtenances thereunto belonging; and

(b) Hereby acknowledges full satisfaction of said decree entered December 18, 1936 in the Superior Court of Cook County, Illinois, in proceedings entitled "William A. Thuma, complainant, *vs.* Granada Hotel Corporation, a corporation, et al., defendants, No. 519151," and hereby empowers and authorizes the Clerk of the said Superior Court of Cook County, Illinois, to satisfy said decree of record.

290 In Witness Whereof, the said Carl R. Chindblom, as Special Master as aforesaid, has hereunto set his hand and seal this ..... day of ..... A. D., 1937.

.....(Seal)

As Special Master.

State of Illinois, }
County of Cook. } ss.

I, ..., a Notary Public in and for the County and State aforesaid, Do Hereby Certify that Carl R. Chindblom, as Special Master, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this ..... day of ..... A. D., 1937.

.....

Notary Public.

291 EXHIBIT "I".

Release.

Know All Men By These Presents that

Whereas, Granada Hotel Corporation, an Illinois corporation, made, executed and delivered its certain Trust Deed dated September 1, 1928, to Chicago Trust Company, as Trustee, to secure its Second Mortgage 6% Real Estate Gold Bonds in the principal amount of Three Hundred Sixty Thousand Dollars ($360,000), which said Trust Deed was recorded in the office of the Recorder of Deeds of Cook County, Illinois, on October 1, 1928, as Document 10162332; and

Whereas, the title to the property conveyed by said Trust Deed has been subsequently acquired by Granada Apartments, Inc., an Illinois corporation; and

Whereas, a Plan of Reorganization of said Granada Apartments, Inc., was confirmed on July 14, 1937 by order entered in proceedings pending in the District Court of the United States, for the Northern District of Illinois, Eastern Division, entitled "In the Matter of Granada Apartments, Inc., a corporation, Debtor, No. 65811," which said Plan of Reorganization provided in part that the Successor Trustee under said Trust Deed should execute and deliver an instrument of release of said Trust Deed; and

Whereas, Charles H. Albers, Receiver of Central Republic Trust Company, as Successor Trustee under said Trust Deed, was directed by said order entered July 14, 1937, to execute and deliver an instrument of release of said Trust Deed upon written request so to do from Charles S. Tuttle, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, presently constituting the Protective Committee, acting under a certain Deposit Agreement dated April 25, 1933, with respect to the First Mortgage 6% Real Estate Gold Bonds of said Granada Apartments, Inc.; and

Whereas, said order entered in said proceedings further provided that if within five (5) days from the date of the receipt of said written request as aforesaid, the said Charles H. Albers, as Receiver of Central Republic Trust Company, as said Successor Trustee, shall fail, refuse or neglect to execute, acknowledge or deliver such instrument of release of said Trust Deed, then and in that event Carl H. Chindblom be and is appointed Special Master in the said proceedings for the purpose of releasing said Trust

Deed; and the said Carl R. Chindblom be and is authorized and empowered to execute, acknowledge and deliver said instrument of release and to do any and all acts necessary and proper in connection therewith; and

Whereas, the said request having been duly given to the said Charles H. Albers, as Receiver of Central Republic Trust Company, as said Successor Trustee, as provided for in said order, and the said Charles H. Albers, as Receiver of Central Republic Trust Company, as said Succes-
292 sor Trustee, having failed to execute, acknowledge and deliver the said release of the said Trust Deed as so directed in said order:

Now, Therefore for and in consideration of the premises and pursuant to the said Plan of Reorganization and the direction contained in the said order entered in said proceedings above referred to, Carl R. Chindblom, as Special Master, does hereby remise, convey, release and quitclaim unto Granada Hotel Corporation an Illinois corporation, all the right, title, claim or demand whatsoever which Charles H. Albers, as Receiver of Central Republic Trust Company, and/or Central Republic Trust Company, as Successor Trustee, may have acquired in, through or by a certain Trust Deed bearing the date the 1st day of September, 1928 and recorded in the office of the Recorder of Deeds of Cook County, Illinois, on the 1st day of October, 1928, as Document 10162332 (and any and all indentures supplemental thereto) in and to the premises described therein, to-wit,

Lots thirty-two (32) and thirty-three (33) of Outlot "C" in Wrightwood, a Subdivision of the Southwest Quarter of Section twentyeight (28), Township forty (40) North, Range fourteen (14), East of the Third Principal Meridian, in Cook County, Illinois,

together with all improvements thereon and appurtenances thereunto belonging.

In Witness Whereof, the said Carl R. Chindblom, as Special Master as aforesaid, has hereunto set his hand and seal this ..... day of .....,
A. D., 1937.

.....(Seal)
As Special Master.

State of Illinois, } ss.
County of Cook. }

I, ..., a Notary Public in and for the County and State aforesaid, Do Hereby Certify that Carl R. Chindblom, as Special Master, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this ..... day of ..... A. D., 1937.

.....
Notary Public.

Entered Oct. 22. 1937.

293 And afterwards, to wit, on the 22nd day of October, A. D. 1937, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

294 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—65811)

ORDER.

This cause coming on to be heard upon the petition of the Protective Committee acting under the certain Deposit Agreement dated April 25, 1933, with respect to the First Mortgage 6% Real Estate Gold Bonds of Debtor, and the Court being fully advised in the premises, It Is Ordered:

1. That counsel for the Committee be and hereby is authorized to cause to be incorporated a corporation under and pursuant to the provisions of "The Business Corporation Act" of the State of Illinois, the corporate name of which is to be "The Granada, Inc." or such other name as may be selected by counsel for the Committee. Said corporation, when so organized, to be and to constitute the "Reorganized Company" designated in the Plan of Reorganization of Debtor heretofore confirmed herein by order entered July 14, 1937; the articles of incorporation of said Reorganized Company to be substantially in the form attached as Exhibit "A" to said petition, which form be and hereby is approved.

2. That the form of By-Laws of the Reorganized Company attached to said petition as Exhibit "B" be and hereby is approved and the persons who shall constitute the first Board of Directors of the Reorganized Company
295 be and hereby are authorized to adopt said By-Laws in form substantially as set forth in said Exhibit "B" to said petition.

3. That the form of the Trust Agreement attached as Exhibit "C" to said petition be and hereby is amended as follows:

(a) By adding as a first sentence to Section 4 the following:

"The Participation Certificates shall be registered on the books of the Trustees kept for that purpose at the office of the Depositary and the term 'Holder' of a Participation Certificate or of Participation Certificates shall mean when used herein the then registered holder or holders thereof as shall appear from and by the said books of the Trustees."

(b) By adding a fourth paragraph to Section 4 as follows:

"The holders of Participation Certificates shall have the same rights with respect to the examination of the books and records of the Trustees as are provided for shareholders of a corporation organized under the laws of the State of Illinois with respect to the books and records of an Illinois corporation."

(c) By striking the second paragraph of Section 10 and by substituting in lieu thereof the following:

"This Agreement and the trust hereby created may also be terminated at any time by written directions signed by a majority in number of the holders of Participation Certificates then of record and outstanding hereunder, which Participation Certificates must also represent a majority in number of the whole shares in the trust, provided that to be effective such written directions shall fix the date of such termination and shall be filed with the Depositary at least ninety (90) days prior to the date so fixed for such termination.

(d) By adding in paragraph 7 of section 11 immediately following the words "Managing Trustee" the following words: "to superintend the corporate property and affairs".

(e) By adding in paragraph 7 of section 11 immediately following the words "additional reasonable compensation"

the following words and figures: "of not less than two per cent (2%) of the gross annual income of the Corporation".

(f) By adding an additional sentence to paragraph 4 of Section 16 as follows: "Any one of the original Trustees under this Trust Agreement may be, but need not be, appointed as a successor Depositary."

296 That the form of general assignment and assumption attached as Exhibit "E" to said petition be and hereby is amended by adding a new paragraph immediately following paragraph 5, as follows:

"There is reserved and excepted from this assignment the balance on deposit as of the date hereof to the credit of Weightstill Woods, as said Trustee, with Harris Trust and Savings Bank of Chicago, Illinois, and there is further reserved and excepted from this assignment all claims and rights of action (including matters of account) by Weightstill Woods, as said Trustee, against The Arlington, Inc., a corporation, City National Bank and Trust Company of Chicago, a corporation, Indemnity Insurance Company of North America, a corporation, and the County Treasurer of Cook County, Illinois, it being understood and agreed between the parties to this agreement that such claims and rights of action are to be retained by said Weightstill Woods, as said Trustee, for the purpose of continuing the prosecution thereof to final disposition in said above mentioned cause, and are to be subject to the further order of the said Court in the said above mentioned cause."

4. That the form of Trust Agreement attached as Exhibit "C" to said petition as heretofore amended be and hereby is approved, and Clarence N. Boord, William H. Haight and Weightstill Woods be and hereby are designated as the initial Trustees under said Trust Agreement, the said Trust Agreement to be dated October 30, 1937.

5. The form of the following documents attached as Exhibits "D" to "I", inclusive, to the said petition, being as follows:

297 (a) Deed from Trustee in these proceedings to the Reorganized Company;

(b) General Assignment and Assumption by and between Trustee in these proceedings and the Reorganized Company, as amended by paragraph 3 of this order;

(c) Notice from Committee to Successor Trustee under trust deed dated September 1, 1928, securing First Mortgage 6% Real Estate Gold Bonds of Debtor;

(d) Notice from Committee to Successor Trustee under

trust deed dated September 1, 1928, securing Second Mortgage 6% Real Estate Gold Bonds of Debtor;

(e) Release of trust deed dated September 1, 1928, securing First Mortgage 6% Real Estate Gold Bonds of Debtor and satisfaction of decree entered December 18, 1936, in the Superior Court of Cook County, Illinois, in Cause No. 519151;

(f) Release of trust deed dated September 1, 1928, securing Second Mortgage 6% Real Estate Gold Bonds of Debtor;

be and hereby is approved.

6. That the respective parties to the said Trust Agreement be and hereby are authorized, empowered and directed to forthwith execute, acknowledge and deliver said Trust Agreement in form substantially as set forth in said Exhibit "C" to said petition, and to do any and all
298 acts necessary and proper to carry out and consummate the matters and things therein contained.

7. That the Committee be and hereby is authorized and directed to forthwith sign the respective notices to the respective Trustees in form substantially as set forth in said respecive Exhibits "F" and "G" to said petition, and cause the same to be delivered, and in the event said Successor Trustees or either of them shall fail, neglect or refuse to execute, acknowledge and deliver the said respective instruments referred to in said respective notices within five (5) days after the receipt thereof, then and in that event Carl R. Chindblom be and hereby is, authorized and directed to execute, acknowledge and deliver to the Committee said instruments pursuant to said order entered July 14, 1937, in substantially the respective forms as set forth in said Exhibits "H" and "I" attached to said petition.

8. That Weightstill Woods, as Trustee appointed in these proceedings, be and hereby is authorized, empowered and directed to forthwith execute, acknowledge and deliver to the Reorganized Company said deed in substantially the form as set forth in Exhibit "D" attached to said petition.

9. That Weightstill Woods, as Trustee appointed in these proceedings, be and hereby is authorized, empowered and directed to execute, acknowledge and deliver to the Reorganized Company said instrument of General Assignment and Assumption in substantially the form set forth in said Exhibit "E" attached to said petition as above amended.

10. That the proper officers of the Reorganized Com-

pany upon receipt by it of said instrument of General Assignment and Assumption so executed by the said
299 Weightstill Woods, as Trustee in these proceedings, be and hereby are authorized, empowered and directed, for and on behalf of said Reorganized Company, to execute, acknowledge and deliver said instrument of General Assignment and Assumption and to deliver one executed original thereof to the said Weightstill Woods, as said Trustee in these proceedings.

11. That Weightstill Woods, Trustee in these proceedings, be and hereby is authorized, empowered and directed, contemporaneously with the delivery by him of the said deed to the Reorganized Company, to turn over to the Reorganized Company possession of the property and assets of the Debtor then held by him as said Trustee, and shall thereupon within fifteen (15) days thereafter file herein his final report and account as said Trustee in these proceedings.

12. That City National Bank and Trust Company of Chicago be and hereby is designated as Depositary under said Trust Agreement and as the agency pursuant to Section C of the Plan of Reorganization, to which shall be surrendered the securities and instruments of discharge and satisfaction as therein set forth.

13. That the Trustees under said Trust Agreement be and hereby are authorized and directed to deliver to said Depositary the Participation Certificates issuable under said Trust Agreement, and said Depositary be and hereby is authorized and directed to take such steps as may be necessary to effect the distribution of such Participation Certificates in the number of shares and to the persons entitled thereto, and in the manner as provided in the said Plan of Reorganization but only upon the approval and written direction of the Trustees.

14. That the Reorganized Company be and hereby
300 is authorized and directed to forthwith cause to be issued all of its presently authorized shares of capital stock to the Trustees under said Trust Agreement.

15. That all costs, fees, taxes and expenses incurred in connection with the consummation of the Plan of Reorganization and in connection with the carrying into effect of the matters and things hereinabove set forth shall be paid forthwith, without further order of this Court, by Weightstill Woods, as Trustee in these proceedings, from funds of the Debtor in his possession until such time as he

shall turn over the property and assets of the Debtor now in his possession to the Reorganized Company, and thereafter such costs, fees, taxes and expenses so incurred shall be paid by the Reorganized Company without further order of this Court.

16. That nothing herein shall be construed as limiting or prejudicing the right of City National Bank and Trust Company of Chicago in its individual capacity or as Successor Trustee under Trust Deed securing the First Mortgage 6% Real Estate Gold Bonds of Debtor, to proceed to an ultimate determination of its claim numbered 9 and its petition for settlement of accounts heretofore filed herein and to have the amount ultimately found due thereon paid pursuant to the Plan of Reorganization; and nothing herein contained shall be construed as an adjudication or decision of any issues raised by the answer and counterclaim by Weightstill Woods, Trustee in these proceedings, now pending to said claim numbered 9 and petition by City National Bank and Trust Company of Chicago for a settlement of its accounts.

17. That this Court reserve jurisdiction with respect to the matters and things herein contained and with
301 respect to all matters and things hereafter arising in connection with the consummation of the Plan of Reorganization not heretofore determined, and for the purpose of amplifying, extending, modifying or amending this order without further notice.

Enter:

Barnes,
Judge.

Dated October 22, 1937.

302 And afterwards, to wit, on the 12th day of October, A. D. 1937, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

Entered Oct. 12, 1937.

303 IN THE DISTRICT COURT OF THE UNITED STATES.

Tuesday, October 12, A. D. 1937.

Present: The Honorable John P. Barnes, District Judge.

* * (Caption—65811) * *

This day again come the parties by their solicitors and the Court having heard all the evidence adduced said cause is taken under advisement by the Court Trustee to file Brief and submit findings of fact and conclusions of law within 15 days from this date. Claimant to file brief and submit findings of fact and conclusions of law within 30 days from this date and Trustee to file reply brief within 40 days from this date.

Entered Oct. 21, 1937.

304 And afterwards, to wit, on the 21st day of October, A. D. 1937, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

305 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—65811) * *

ORDER ON MOTION BY COURT TRUSTEE TO CONSOLIDATE CERTAIN HEARINGS, RE CITY NATIONAL BANK AND TRUST COMPANY.

This cause coming on to be heard regularly upon the trial call of this Court and all counsel of record being present and represented in open Court, and the Court Trustee having presented orally and in writing filed in this cause his motion to obtain this order and other counsel having expressed their views and the Court being fully advised in the premises:

It Is Ordered that all evidence taken before the Referee and the application and petition made to the Court, for allowance of fees and expenses to the Bondholders' Committee for the services claimed to have been rendered to it by the City National Bank and Trust Company as depositary and for facilities furnished by the City National Bank and Trust Company for Committee use and for services of counsel to the Committee or to City National Bank and

Trust Company be and hereby are consolidated with the accounting proceedings now pending for settlement of accounts between City National Bank and Trust Company and Debtor Estate.

It Is Further Ordered that all application for such administrative allowance and all evidence presented pertaining thereto shall be considered as part of the hearing
306 which has been had in open Court, to be included and considered in preparing the findings and the briefs to be presented to the Court, and to have disposition as part of said accounting proceedings now pending in this Court.

Enter:

Barnes,
District Judge.

Dated: October 21, 1937.

362 And afterwards, to wit, on the 25th day of October, A. D. 1937, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit: Filed Oct. 25, 1937.

Memorandum.

363 In the District Court of the United States.

(Caption—65811.)

MEMORANDUM.

This matter came on to be heard on the applications of various parties in interest for the allowance of fees and expenses to be charged as expenses of administration.

Mr. B. W. Rosenstone was appointed special trial attorney for the trustee in certain specific matters and asks an allowance of $1000 for the services rendered by him. The sum of $800 may be allowed.

Mr. Weightstill Woods, the trustee appointed by the court, asks a reasonable allowance for his services as trustee other than for his services in certain specific matters which are enumerated in his petition. The sum of $3500 may be allowed.

Mr. Fred C. Myers asks an allowance of $750 for disbursements and $5000 for services rendered by him in three cases as follows:

Granada Hotel Corp., a Debtor, #2613-Danville;
Granada Apts., Inc., a Debtor, #2701-Danville;
Granada Apts., Inc., a Debtor, #3008-Danville.

Mr. Myers states that he was appointed trustee by the District Court for the Eastern District of Illinois in the first of these cases, being No. 2613-D, and that he rendered services in the other two cases. The first of the three cases above mentioned was dismissed, at petitioners' costs, after going to the Supreme Court. The court cannot make an allowance in this case for services rendered in that case. The other two cases referred to by the claimant are the cases that were consolidated in this court and which are now before the court. The court cannot find that any
364 orders of appointment were made in either of these cases at any time by anyone. Furthermore, it does not appear to the court that claimant's services were of value to the estate now before the court. Accordingly, there will be no allowance.

Mr. Samuel Micon has filed two petitions for fees and disbursements. In each of said petitions he asks $3000 for services and $25 for disbursements. There is some difference in the two petitions in respect of a claim for $2500, part and parcel of the aforesaid claim of $3000. It seems that Mr. Micon, the claimant, represented the complainant in a creditors' suit in the State court and that in said creditors' suit he procured the appointment of a receiver for the debtor and that the resulting equity receivership was used as a basis for the jurisdiction of this court in one of the cases now pending before this court. As the court remembers the Illinois law, there is no warrant thereunder for any allowance to the complainant in an equity receivership case for solicitor's fees. As a matter of fact, under the Illinois law, solicitor's fees are only allowed to parties were they are expressly provided for by statute. Accordingly, there is no justification for an allowance to Mr. Micon for services rendered by him in the State Court. As regards the services which he may have rendered in this court; the court understood that such services were being rendered for his client and not for the court. The court cannot say that Mr. Micon's services were of value to the estate. Accordingly, there will be no allowance to him either for services or for disbursements.

Mr. David H. Kraft asks an allowance of $100 for services rendered by him on behalf of his brother, Mr. Maurice M. Kraft, who was the holder of a $500 bond. The court cannot say that Mr. Kraft's services were of benefit to the estate. Accordingly, there cannot be any allowance of fees. This claim will be disallowed.

365 Messrs. Gilbert F. Wagner, Jay R. Lasky and David N. Greenberg ask an allowance of $4500 for their services as attorneys for the petitioning creditors in one of the cases which was consolidated to form the case now pending before the court. They also ask an allowance of $135 for their disbursements. Because of the loss which the bondholders are bound to take in this case, the claim of counsel must be drastically cut. There may be an allowance of $750 for fees and $135 for disbursements.

Messrs. Mort D. and Frank Goldberg ask an allowance of $6500 for services rendered by them as attorneys for the petitioning debtor in one of the proceedings which was consolidated to form the proceeding now before the court. They also ask $174.55 for their disbursements Because bondholders will suffer substantial losses in this case, this claim will have to be drastically cut. The sum of $750 for services will be allowed and the item for disbursements may be allowed in full.

Mr. Carl R. Chindblom has asked an allowance of $185 for services as special master on two references and the sum of $50 for expenses on said two references. Said items, in the total sum of $235, may be allowed. The court reporter, Mr. William J. Snyder, who reported this proceeding before the special master, asks an allowance for $150.25 for his attendance and transcript. This item may be allowed.

Consideration of the petition of the bondholders' committee for the allowance of fees and expenses and the petition of Messrs. Defrees, Buckingham, Jones & Hoffman for allowance of counsel fees is postponed to await the coming in of briefs which have been directed to be filed.

An appropriate order may be made at the opening of court on Wednesday, October 27, 1937, without any further notice than this.

Barnes,
Judge.

October 25, 1937.

366 And afterwards, to wit, on the 30th day of December, A. D. 1937, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

Entered Dec. 30, 1937. 367 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—65811.)

ORDER.

This matter coming on to be heard upon the motion of Defrees, Buckingham, Jones & Hoffman, attorneys for City National Bank and Trust Company of Chicago, as Trustee, upon due notice to Weightstill Woods, Trustee in Bankruptcy;

It Is Ordered that the certificate of evidence and transcript of proceedings in the matter of the petition, report and account of City National Bank and Trust Company of Chicago, as Trustee, the answer thereto and counterclaim of Weightstill Woods, Trustee in Bankruptcy, and in the matter of the petition of Weightstill Woods, Trustee in Bankruptcy, in respect of services to The Arlington, Inc., and all matters consolidated by orders 10/21/37 and 12/10/37, and the answer thereto of The Arlington, Inc.,—now submitted in open court—consisting of three volumes, be and it is hereby certified and approved as the full and correct certificate of evidence and transcript of proceedings of the hearings on the matters aforesaid;

And It Is Further Ordered that the same be forthwith filed with the Clerk of this Court and made a part of the record in the above entitled cause.

Enter:
Barnes,
Judge.

December 30th, 1937.

184 And on, to wit, the 30th day of December, 1937, came Weightstill Woods, Trustee, and filed in the Clerk's office of said Court his certain Notice in words and figures following, to wit:

185 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Dec. 30, 1937.

(Caption—65811.)

NOTICE

To:

Defrees, Buckingham, Jones & Hoffman,
105 South La Salle Street,
Chicago, Illinois.

Please take notice that on Thursday, December 30, 1937 at the opening of Court in the forenoon, the undersigned will attend before said Court, the Honorable John Peter Barnes, Judge presiding, at his usual Courtroom in the United States Courthouse at Chicago, and make motion for a rule that the Bondholders Committee and its counsel immediately file for record, the releases of mortgages and liens mentioned in the Plan, and orders July 14th and October 22, 1937 in this proceeding, and that they proceed forthwith for clearance of objections mentioned in the Opinion of Title which they have had since November 12, 1937.

And also make motion for approval by the Court and filing of three (3) volumes of evidence and one (1) volume of pleadings, including the proceedings December 3rd and 10th inclusive, as the complete record in the accounting proceedings between Debtor estate and City National Bank & Trust Company and associate litigants.

Weightstill Woods,
Weightstill Woods,
Federal Trustee.

Received a Copy of the Above and foregoing notice this 29th day of December A. D. 1937.
Defrees, Buckingham, Jones & Hoffman,
R. L.

377 And on, to wit, the 2nd day of April, 1938, there was filed in the Clerk's office of said Court a certain Statement of Receipts and Disbursements in words and figures following, to wit:

Filed 378
Apr. 2,
1938.

Granada Apartments Inc. Debtor
Weightstill Woods—Temporary Trustee
525 W. Arlington St.
Chicago, Ill.
Statement of Cash Receipts and Disbursements
May 17th, 1937 to March 31st, 1938

Receipts:			
City National Bank—Former Trustee Remittance			$ 773.40
Accounts Transferred			2,878.54
Rental—Rooms			29,887.97
Heat, Water and Refrigeration—Hotels			6,641.68
Guest Services:			
Telephone & Telegraph—Receipts		$1,758.56	
Disbursements		1,658.89	99.67
Valet Service— Receipts		$ 630.75	
Disbursements		539.60	91.15
Laundry— Receipts		$ 465.01	
Disbursements		331.94	133.07
Newspapers— Receipts		$ 228.69	
Disbursements		160.21	68.48
Miscellaneous Income:			
Telephone Refund	$ 30.75		
Recovery Delinquent accounts and notes	120.00		
Sale of old and waste material	163.85		
Insurance—fire loss—Canopy	60.00		
Commission—Sale of Tickets	1.25		375.85
Total Receipts			$40,949.81
Deduct: Disbursements per Schedule			40,192.58
Balance in hands of Trustee			$ 757.23
On Deposit—Harris Trust & Savings Bank			$ 757.23

379

Disbursements:			
General and Administrative			
Salaries		$2,378.67	
Trustee Fees		3,500.00	
Promotion and Entertainment		349.64	
Topics—Disbursements	$232.38		
Receipts	170.73	61.65	
Stationery and Supplies		88.45	
Social Security Tax O.A.B.		109.92	
Unemployment insurance		230.40	
Insurance		1,904.07	
Taxes—Real Estate 1936		4,846.87	
" —Personal Property 1931 and 1936		1,000.00	
Collection Expense		96.67	
Auditing		500.00	
Exchange and Bank Charges		19.93	
Miscellaneous Expense		65.66	$15,151.93
Rooms Expense:			
Wages		$5,238.16	
Supplies and Expense		25.52	5,263.68
Heat, Water and Refrigeration:			
Wages		$1,210.00	
Fuel, oil and refrigeration gas		922.78	
Electricity		2,789.36	
Water		1,131.18	
Ash and rubbish removed		50.00	6,103.32
Operating Expense:			
House Laundry and Cleaning		$1,386.67	
Gas		225.27	
Patrol		15.00	
Uniforms		31.14	
Supplies		437.18	
City Inspection Fees		20.00	
Association Dues		42.68	
Advertising Space		22.29	
Extermination Service		14.15	2,194.35
Repairs and Maintenance:			
General			
Wages	$522.50	522.50	
Forward		$ 522.50	$28,713.28

380

Repairs & Maintenance—Continued Forward		$ 522.50	$28,713.28
Decorating:			
Wages	$1,087.50		
Material & Supplies	157.50	1,245.00	
Furniture:			
Wages	$ 533.50		
Material, Supplies and Expense	504.62	1,038.12	
Household Equipment		1,228.96	
Linenes		378.06	
Building:			
Repairs and Supplies Expense		938.74	
Plant:			
Machinery Replacements		123.54	
Total Repairs & Maintenance			$ 5,474.92
Total Operating Disbursements			$34,188.20
Other Disbursements:			
Legal Expense—Attorney Fees in reorganization proceedings			$ 2,194.80
Legal Expense in suit vs. City National Bank:			
Attorneys Fees		$ 800.00	
Special Masters Fee		35.00	
Court Reporters Fees		741.45	
Engineering Survey		400.00	
Furniture appraisal fee		24.50	
Witness fee		50.00	
Blueprints and Photos		38.10	
Printing		337.70	
Legal Notice Publication		370.50	$ 2,797.25
Organization Expense—New Corporation:			
Filing Fee		$ 28.00	
Franchise Tax		421.00	
Corporation Records		11.33	
Participation Certificates		52.00	$ 512.33
House Fund Transferred to New Corporation			$ 500.00
Total Disbursements			$40,192.58

386 And afterwards, to wit, on the 24th day of May, A. D. 1938, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit: Entered May 24, 1938.

387 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—65811.)

ORDER.

The report by the court trustee dated and filed May 24, 1938 is presented to the court for consideration and approval.

The court finds that no objections have been made to the accounts of the court trustee which were approved by order of this court April 4, 1938; and that said accounts stand confirmed.

It Is Ordered that the maximum penalty or liability on the bond of the court trustee be reduced to the sum of Five Thousand and no/100 Dollars, effective from and after May 17, 1938.

It Is Further Ordered that Weightstill Woods continue as court trustee until after disposition of all pending litigation to which he is party in this Court.

Enter:

Barnes,

United States District Judge.

Dated: May 24, 1938.

307 And on, to wit, the 30th day of September, 1938, came the City Natl. Bank & Trust Co. of Chicago et al. by their attorneys and filed in the Clerk's office of said Court their certain Suggestions and Objections in words and figures following, to wit:

Filed Sept. 30, 1938. 308 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—65811) * *

SUGGESTIONS AND OBJECTIONS OF CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO, CHARLES S. TUTTLE, ET AL., AND DEFREES, BUCKINGHAM, JONES & HOFFMAN TO THE DECREE, FINDINGS OF FACT, AND CONCLUSIONS OF LAW DRAFTED BY THE COURT TRUSTEE AND PRESENTED TO THE COURT SEPTEMBER 24, 1938.

Now come the above parties, by Defrees, Buckingham, Jones & Hoffman, attorneys, and make the following suggestions and objections in respect of the findings of fact, conclusions of law, and decree proposed by the court trustee and presented to the court September 24, 1938:

The Findings of Fact.

In general:—

1. They are argumentative.

2. They do not purport to be, and are not, but should be, findings of ultimate facts.

3. The instances in which facts are alleged, either without support of any evidence of record or in direct contradiction of the only evidence of record, are numerous and substantial, so as to make it seem that the court trustee is trying to tell his own story rather than that told by the record.

309 The Fact Findings as Related to the Court's Oral Opinion.

1. At the conclusion of its oral opinion the court stated "Counsel for the court trustee may prepare, and on notice present, findings of fact and conclusions of law, and a decree consistent with what I have stated."

Findings of fact, where required, are intended to evidence the ultimate fact conclusions arrived at by the court from the record. They may not properly be mere statements of evidentiary facts on or off the record. The findings submitted by the court trustee not only violate this

rule but defeat the very purpose and objective of fact findings as that term is used in the law,—that is to say, it is not possible to look at the proposed fact findings and to discover what the ultimate findings of the court are.

2. The findings are not consistent with the oral opinion of the court because

(a) The court did not make; and its oral opinion is inconsistent with, the proposed finding numbered 53.

(b) The court in its oral opinion made no such finding as is proposed at number 54, nor is there any basis in fact or in law for such finding. Indeed, there hasn't even been a pleading or hearing of any kind to support such finding or even to suggest that such relief was sought. There has been no showing anywhere that the Continental Illinois National Bank and Trust Company is not entitled to be paid. Indeed, the court has ordered the court trustee to pay it.

(c) At number 55 the court trustee proposes that the court find that all matters stated in his answer and counterclaim are fully established by evidence in the record and that he is entitled to full relief on account thereof, 310 also that all items claimed as credits by City National should be disallowed.

Not only did the court make no such finding, but it expressly found to the contrary when it said in its oral opinion:

"I have deliberated quite a long while as to whether or not I should charge this trustee with anything over and above the amount which would otherwise be payable to it as fees and disbursements. * * * Now, upon consideration, I have concluded that certainly the bank will not be harmed if I set off the claims which the court trustee has against it, against its claims for further fees and allowances and the further fees and allowances of the bondholders' committee, the trustee's officers and employes who act as a committee."

Thus in its opinion the court clearly fixed the limit of liability at an amount equal to the aggregate of the fees allowed. This is quite at variance with the court trustee's proposed finding numbered 55.

(d) The remarks contained in (c) last above apply with the same force to the court trustee's proposed finding number 56, and, in addition thereto, we note in respect of 56:

(1) The court did not in its opinion tax any costs

against the City National, nor are the items mentioned by the court trustee at Section 1 of paragraph 56 taxable costs.

(2) It is not possible to discuss in detail items 2 to 12 under proposed fact finding 56 without going into the entire case or without repeating specific objections hereinafter made, but in relation to the court's oral opinion we here point out that the court did not so find. As to item 3, for example, the court said nothing whatso-
311 ever about it. As to the item of $13,000 under number 4, the court expressly stated that it was true that the City National did not issue the receiver's certificate, and that it was not the receiver, and was not trustee, at the time of the issuance of the receiver's certificate. Take item 5, management fee of trustee in possession,—the court said nothing whatever about it, nor was there ever any showing that the amount charged was unreasonable. In short, the court in its oral opinion made no finding in reference to any of these items, and there is either no evidence at all to support them or the preponderance of the evidence is otherwise.

(e) In proposed finding number 57 it is stated that "triple damages per statute" are authorized, etc. A mere reading of the transcript of the court's oral opinion will demonstrate to anybody that this is not a finding "consistent with what I have stated."

(f) The court trustee's suggested finding at number 58 is shuffling and evasive and a substantial distortion, at variance with the court's oral opinion. The court never found that the City National was not the lawful trustee. Indeed, it expressly recognized it as trustee for all purposes of reorganization, such as the release of the first mortgage, etc. And of course the court did not find that if the City National were a lawful trustee, then it should receive for its services not exceeding $500. As to the committee the court expressly stated in its opinion:

"I think the maximum fee that they could be allowed for their service would be $200 apiece, or $1,000. Assuming that all of this out-of-pocket expense of $2,285.21 is justified, assuming that the depositary is entitled to $1,150, the maximum that the Committee could be en-
entitled to would be $4,157.24. * * *
312 The best I can make out of it, the most that could go to the attorneys would be $4,500, $4,157.24 to the committee, and $500 to the trustee."

So that the court did not find that the committee has not justified its claim for out-of-pocket expenses nor that the demands of respondents all are unreasonable and inequitable.

The fact is that the court allowed counsel $4,500, the depositary $4,157.24, and the City National, as trustee, $500, and then said

"I have concluded that * * * if I set off the claims which the court trustee has against it, against its claims for further fees and allowances and the further fees and allowances of the bondholders' committee" the bank will not be harmed. "The trustee will not be paid any further moneys; the bondholders' committee will not be paid any moneys; and if the trustee desires its counsel to have any further moneys it will have to compensate its counsel."

(g) As to fact finding number 60—the court in its opinion said nothing about "recoupment," nor is the doctrine of recoupment applicable to the situation at bar in so far as the court trustee is concerned.

In a general way, there is a basic objection which applies particularly to proposed findings 53 to 60, inclusive, and that is that the court in its oral opinion expressly refused to make any such findings. As noted above, the court stated

"I have deliberated quite a long while as to whether or not I should charge this trustee with anything over and above the amount which would otherwise be payable to it as its fees and disbursements. That was one reason I put these briefs away and let the matter rest for two or three months. I don't want to do that bank any injustice, but I think it has done that property some injustice.

Now, upon consideration, I have concluded that certainly the bank will not be harmed if I set off the claims which the court trustee has against it, against its claims for further fees and allowances," etc.

313 The items listed by the court trustee in finding 56 exceed $114,000. The ceiling on the fees and expenses of the mortgage trustee, the committee and their counsel is, in the aggregate, about $9,200. It is plain that the court did not have in mind any such finding as proposed by the court trustee at number 56. Rather the court's conclusion seems to be that the bank "has done that property some injustice" by reason of which it is to be de-

prived of fees and expenses and of reimbursement for its obligations to counsel. In this connection, if the court will refer to the last page of the draft of decree submitted by court trustee, it will find that the court trustee expressly excepts to paragraph 59 of the findings of fact. Referring to 59, the court will see that after finding due the court trustee all of the items mentioned in paragraph 57 the court nevertheless says "that justice to all concerned will be rendered more speedily if the opposing claims and contentions are set off against each other," no cash recovery to be allowed or made to the court trustee by virtue of the findings.

If the court trustee can get the court to make the findings suggested at number 56, expressly contrary to what the court has already held in its oral opinion, then of course the court trustee has good grounds for the exception which he notes at the foot of the decree to paragraph 59 of the fact findings. The point is that if the court on the record found due the court trustee $114,000, as mentioned in finding 56, and then three times that amount as triple damages, as mentioned in paragraph 57, and then sought to relieve the bank of liability for payment except to the extent of $9,200, its decree would be patently erroneous. It is plain that the court made no such
314 palpable error in its oral opinion, but the court trustee now asks it to do so by adopting the findings in this form.

Specific Objections to the Proposed Findings of Fact.

The numbers following relate to findings proposed by the court trustee bearing the same numbers, respectively.

2. We object to the last words "under Chapters II and X of amended law."

The reorganization was fully consummated before the effective date of the Chandler Act, and the court trustee's present powers are merely those reserved by former orders of court and are specifically to conclude the pending litigation.

3. We object to the last words "upon written request of the bondholders' committee."

The City National was directed by court order to release the mortgage.

4. We object to the language commencing in the second to the last line reading "has been since that date authorized to prosecute."

The court trustee brought the litigation without any instruction or order of court but on his own initiative.

6. We object to the word "voluntarily," starting in the first line.

The mortgage trustee was compelled by law to account to the Federal Court.

8. We object to the use of the word "these" in the last line.

The court ordered the court trustee to submit findings consistent with his oral opinion—not to submit "these" findings.

315 10. We object to the words "bondholders' committee and their counsel," starting in the first line.

The account and claim to which the court trustee's counterclaim was filed was put in by the City National, not by the committee, and accordingly we object also to the use of the word "they" starting in the fourth line of this finding and to the word "respondents."

We further object to the finding reading "The Judge deems that application of Chapter II and Chapter X of bankruptcy amendments approved by the President June 22, 1938, to this litigation is practicable and desirable. The decree herein shall so provide."

Under the Chandler Act the district judge is vested with no power to make any chapter save Chapter X applicable or inapplicable. Chapter X relates to corporate reorganizations. The reorganization here was consummated long before the adoption of the Chandler Act, and hence Chapter X is not applicable. As to Chapter II, its applicability is not to be determined by order of the district judge, nor is it applicable to this case, for the rights and powers of the parties and those of the court are to be determined by the law in effect at the time the trial was had. This trial was concluded before the effective date of the Chandler Act in reference to the law as it then was.

11. We object to the phrase "proposed to build" and to the sentence "This real estate department was in charge of three men named Cody, Lewis H. Riddle and other persons."

There is no such evidence of record.

316 12. (a) The words "to serve" in the second line are objected to as too general.

(b) The sentence "Mateer owned the corporate stock" is objected to.

There is no such evidence of record, and it is not the fact that Mateer owned the corporate stock.

13. We object to the words "and was operating as a business unit" in the fourth line.

There is no evidence of record that the properties were operated as a business unit and it is not the fact. The Granada lobby was used as a sort of social center.

14. (a) We object to the statement "there was a failure by Chicago Trust Company and its counsel to see that the furniture and fixtures in the Granada were paid for out of the proceeds of that loan."

There is no evidence of record and it is not the fact that counsel had anything to do, legally or otherwise, with the security for the loan, with the prospectus, or with the payment of the proceeds of the loan. Nor is there any evidence and it is not the fact that there was any plan, agreement or intention to pay for the furniture "out of the proceeds of the loan." The bare fact is that the underwriter did not procure a prior lien on the furniture as further security for the payment of the bonds.

(b) We object also to the statement "They charged Granada Hotel Corporation more than One Hundred Twenty Thousand Dollar ($120,000). What became of that much furniture is not shown by the record. It is probable the other hotels received part of it."

There is no evidence whatsoever to support either of these statements.

317 15. We object to the statement "By this time the Codys and Louis W. Riddle and associates had separated from Chicago Trust Company and had organized the Cody Trust Company as a new house of issue. There was need to protect Chicago Trust Company and all persons who had participated by placing their names in the prospectus to the bondholders in 1924."

There is no evidence in the record to support either of those statements.

16. (a) We object to the statement "The increase over 1924 was about Three Hundred Thousand Dollars ($300,000). The respondents have not shown what became of

that additional money. * * * What became of the additional Three Hundred Thousand Dollars ($300,000) due from and charged to the bankers is not shown."

The new first mortgage was not larger but was smaller by $25,000, and there is no evidence that the increase over 1924 was $300,000 as to the combined first and second mortgages. Indeed there is no evidence as to the amounts outstanding under the old first and second mortgages which were refunded. What became of the money is a question which was not in issue in these proceedings — hence no showing. The claims filed in the first and second mortgage bonds stand allowed.

(b) We object to the statement "Again there was a failure to pay off the claim of Albert Pick & Company, out of the proceeds of the new financing."

"Failure to pay" implies an obligation under some agreement. There was no agreement so to do.

318 17. We object to the words at the conclusion of the paragraph, reading "and finally $40,000 to stay the sale."

The evidence shows that the $40,000 bond was an appeal bond and not an injunction bond, and it further shows that the injunction which had been dissolved in and by the decree appealed from had not been reinstated pending appeal.

18. We object to the words commencing in the ninth line "which led to a Master's Report of evidence."

There was no master's report on the suggestion of damages.

19. (a) We object to that part of the second sentence which reads "To protect the bankers, another employee or nominee of Cody Trust named Thuma, was now used."

There is no evidence that Thuma was "another employee or nominee of Cody Trust Company."

(b) We object to the statement at the conclusion of the finding "A proper theory and apt argument would have led to the opposite result."

Not only is the statement impertinent but the theory on which the fixture litigation was conducted in the Appellate and Supreme Courts does not appear of record and is unknown to the court since neither the briefs nor any statement of the contents thereof were offered or received in evidence.

20. (a) We object to the statement starting in the fifth line and reading "by direction of the bankers."

There is no evidence that "the bankers", whoever they were, had anything to do with it.

319 (b) We object to the statement "That Company was not a business firm. It was a corporation organized by Cody Trust Officers and their counsel for this one transaction. The bankers made their own collateral."

There is no such evidence of record, nor is it the fact.

21. We object to the words at the end of the finding "to take over its deposit banking business."

There is no such evidence.

22. (a) We object to the opening statement "As a new hedge against the failure to pay off Pick claims out of the 1924 trust deed."

There is no evidence that that was the purpose of the refunding loan, nor could the refunding loan serve such purpose, and there certainly is no evidence that it was a "hedge."

(b) We object to the statement "the Cody Trust Company and their Attorneys in the spring of 1929 organized a new Illinois corporation."

We were not attorneys for Cody Trust Company, and there is no such evidence of record.

(c) We object to the sentence "This assumption also had the effect to change Wenstrand and others who have signed said bonds, from makers to sureties upon the 1928 first mortgage issue."

Wenstrand was, and still is, primarily liable for the payment of the bonds, and it is so recited in the approved plan in this proceeding.

23. (a) We object to the statement "Mr. Malter definitely passed out of the picture," and to the following statement "This corporation never had an independent will of its own."

There is no evidence to support either of these statements and they are not true as to the officers of Gra-
320 nada Apartments, Inc. The fact is, and the record shows, that they had no connection whatsoever with Cody Trust Company, nor were they its dummies. The list of stockholders in the possession of the court trustee shows that these officers were from the beginning and

still are holders in their own right of a substantial amount of the stock of Granada Apartments, Inc.

(b) We object to the statement "An agreement was made between Chicago Trust Company and Cody Trust Company, whereby the latter (as between them) had the duty to see that the Pick claim was disposed of out of the proceeds of refinancing of 1928."

There is no evidence of record of any such agreement, and there was no such agreement.

(c) We object to the statement "the Chicago Title & Trust Company was appointed as nominal receiver, but the order provided it should not disturb the Cody management, then in control of Granada Hotel and revenues."

The Title Company was not appointed as "nominal receiver. It was appointed receiver and acted as such. Moreover, the order did not provide that it should not disturb the "Cody" management. It provided that it was not to disturb the "existing" management, and there is no evidence of record to show what the existing management was at that time.

(d) We object to the statement "an agreement was negotiated by Edward Ball, another employee and nominee of the Cody Trust Company and City National, who was then in charge at Granada, co-operating with their attorneys.

This agreement was not negotiated by Ball, and there is no evidence of record that it was. The evidence is that the agreement was negotiated by the attorneys for 321 Central Republic Trust Company. Moreover, Mr. Ball was not an employee or nominee of either the Cody Trust Company or the City National in 1933, when this agreement was negotiated. He did not become the agent of the City National or its predecessor, the Central Republic Trust Company, nor did he become the nominee of Cody Trust Company until at and after the time that the receiver surrendered possession to the mortgage trustee, which was some time after the negotiation of the agreement here spoken of.

(e) We object to the statement "Thereby the right established in Superior Court to remove said fixtures from the hotel was sold to Central Republic Trust Company, as successor Trustee under the 1928 refinancing trust deed."

Technically, International and Industrial Securities Corporation sold the absolute property in these corporeal chat-

tels. In plainer English, they sold the equipment which they owned and they sold it not to Central Republic Trust Company but to the receiver.

(f) We object also to the statement "to carry out this agreement."

The money was spent not by authority of any agreement but on authority of court order, which is in evidence.

24. (a) We object to the statement "A stipulation was signed by attorneys and some parties in the Superior Court case, and upon that an order was entered," etc.

There was a stipulation, but there was a petition too. It is in evidence.

322 (b) We object to the statement "Services of said attorneys were performed to protect persons other than the bondholders."

The $2,000 paid to this firm was for services in fixture litigation in the Superior Court, the Appellate Court, and the Supreme Court, the purpose of which was to keep in the building the alleged fixture items.

(c) We object to the statement "All said sums were paid primarily for benefit of persons other than Granada debtor and other than Bondholders."

Both Pick and the holder of the receiver's certificate of indebtedness had a prior lien on the property.

25. (a) We object to the implication that Central Republic, City National, or its attorneys knew that officials of Cody Trust Company and Wenstrand had agreed to purchase the receiver's certificate if it was not paid off out of Granada funds.

There is no evidence that that was known to Central Republic, City National, or its attorneys. We further object to the statement in this regard contained in this finding on the ground that it is wholly immaterial.

(b) We object to the statement that the Superior Court judge was not told that Wenstrand and others signed the 1928 refinancing bonds.

Obviously, proceedings for foreclosure were pending in that court and the facts were of record.

(c) We object to the statement "The opinion and findings of this Court in that matter as filed July 13, 1938 is incorporated as part hereof."

We had nothing to do with that trial and it is a separate matter in no way binding upon the parties here.

323 26. (a) We object to the statement "whereby the officers of Chicago Trust Company, Cody Trust Com-

pany and persons above mentioned, all were guilty of offenses upon which statutes of limitations had not then become effective."

There is no showing of offenses and no showing as to when the statute of limitations became effective.

(b) We object to the statement "that these facts were well known to City National Bank and Trust Company and were available to or known by Chicago Title & Trust Company."

There is no such evidence.

(c) We object to the statement "The outstanding and main purpose of this conspiracy was to allow statutes of limitations to run and to use bondholders money to bring about that result. By their efforts the bondholders money paid a second time for furniture at Granada."

Quite patently there was nothing in the action taken which had anything to do with the running of statute of limitations. Equally clear is it that the bondholders' money did not pay for the furniture a second time.

28. (a) We object to the statement "The money misappropriated to buy furniture a second time and to pay to I.I.C.N.A."

There was no money misappropriated and the furniture was not paid for a second time.

(b) We object to the statement that "Creditors were hindered, delayed and defrauded."

There is no such evidence.

(c) We object to the statement "Chicago Title and Trust Company as nominal receiver was a party to some of this diversion of trust funds, from creditors who were not informed."

There is no such evidence.

324 (d) We object to the words in the last sentence of the finding "Respondent and Indenture Trustee," if by those terms is meant City National Bank and Trust Company or the committee.

29. We object to the sentence "Plainly the cross bill was filed for that purpose."

It plainly was not. It was filed for affirmative foreclosure of the entire issue, default having occurred. The cross-bill contributed in no way to the issuance of the receiver's certificate. The trustee was already a party to the litigation and did not become such by the filing of a cross-bill.

30. We object to the entire finding here. It is really a

conclusion of law and an erroneous one at that. In so far as it states facts, we object to the statement.

(a) "All parties knew it was defunct more than two (2) years when for the first time in August, 1933 proceedings to foreclose first trust deed and to issue receiver's certificate were attempted by cross bill."

There is no such evidence and Granada Hotel Corporation was a party to the case long before the cross-bill was filed.

(b) "All proceedings and the decree in Superior Court claim only a debt due from said defunct corporation and no one else."

It is common knowledge that foreclosure proceedings are proceedings in rem and are brought to enforce a lien. They are not barred because the maker corporation is defunct. Moreover, Granada Apartments, Inc., had assumed payment of the first mortgage indebtedness and was a party defendant and cross-defendant. It was not defunct.

325 (c) We object to the statement "By the decree December 18, 1936 the presiding judge of the Superior Court refused to allow or consider any accounting of the funds."

The decree in evidence shows that the court did not undertake to pass on the plaintiff's account as though the plaintiff were an officer of the court, but the decree does state the account as between the parties to the litigation and finds what remains due the plaintiff trustee after allowing all credit on account of rents collected. In other words, the accounting was between the parties and not between the court and any officer thereof.

31. It is not true that respondents stress the contention that Attorney Shanner did not participate in the proceeding in the Superior Court. In fact we made no contention one way or the other.

32. (a) It is untrue that nominees of Cody Trust Company physically and actually operated the property until January, 1934. There is no such evidence anywhere in the record.

(b) We object to the statement "At that time school tax warrants owned by Granada needlessly were sold at a discount."

There is no evidence of this in the record.

(c) We object to the statement "Superior Court was not informed of important facts which show that Company" (meaning Chicago Title and Trust Company, re-

ceiver) "was not entitled to any fees. City National and attorneys knew the facts but made no objection."

There were no facts to show that the receiver was not entitled to fees, nor did City National or its attorneys know of any such facts and hence had no occasion to make objection.

326 (d) We object to the implications arising from the following statements "The record shows that more than $10,000 Granada money was held by City National for a long time and not applied to taxes or other debts. Everybody was taken care of except the bondholders."

The reason for the retention of the $10,000 of Granada money appears affirmatively of record. The testimony is undisputed, and it was held and used for the benefit of the bondholders. Moreover, City National did not become trustee until 1935, long after the money so retained was spent and long after the receiver's final report and account was approved.

33. (a) We object to the statement that City National Bank and Trust Company furnished the personnel and service on the trusts including the Granada matter as to which the Central Republic Trust Company was nominal Trustee.

There is no evidence anywhere of record that City National "furnished the personnel and service on the trusts" (of Central Republic). The record is "that it serviced Central Republic trusts." It furnished facilities and personnel for the use of the Committee.

(b) We object to the statement "From October, 1932 the City National assumed and exercised real control over Granada affairs, whereby it had the duty to require Chicago Title and Trust Company and others to account."

Central Republic Trust Company was the trustee until its resignation, and its officers had full responsibility and control. The court's finding in its oral opinion that City National acted as agent of Central Republic Trust Company does not make City National the trustee. Cen-
327 tral Republic was still the trustee and accountable for its acts as such and those of its agents.

(c) We object to the statement "Under the Illinois law at that time no such question of title could be brought before the court in a foreclosure proceeding. These acts were void."

This is not a finding of fact. It is a conclusion of law and an erroneous one.

34. (a). We object to the statement "This Bondholders Committee had no will of its own. It had been organized in April, 1933 by and among minor officers, employees and nominees of City National Bank and Trust Company."

This statement is directly contrary to the evidence of record.

(b) We object to the statement "From that time until the court trustee in these proceeds took possession under the order of May 17, 1937, City National Bank and Trust Company, claiming to be trustee in possession operated the Granada Hotel property."

This statement is patently untrue. City National did not take possession until January 4, 1935, nor did it claim to be in possession until then.

(c) We object to the statement "City National installed intricate bookkeeping under which Granada moneys were shifted from one fund to another."

Nothing intricate about the system except to the counterclaimant, who does not understand that the books were those of the mortgagee in possession and thus necessarily kept at its offices. He thinks that the mortgagee in possession should have been keeping up the books of the hotel corporation. Funds were transferred from one ac-
328 count to another. This was to earmark them for the benefit of the people they belonged to, so that they would not be disbursed for general purposes,—an entirely proper operation.

(d). We object to the statement "City National and its alter ego, Granada Bondholders Committee entered into possession and engaged in various dilatory litigation."

Three of the five members of the Committee were, and are, in no way connected with the bank. All litigation which was participated in was necessary and unavoidable.

We further object to the implication that the litigation was engaged in in order to keep the trustee in possession of the property. Under the Illinois law it is well known that a mortgagee may stay in possession until the debt is paid. The litigation had to do in the one case with keeping indispensable equipment and, in the other, with avoiding the hopelessly unmerchantable title which would have resulted if the old 77B proceedings had been carried to conclusion.

35. (a) We object to the statement "From 1929 when the new corporation was formed, until May 17, 1937 the actual operation and control of the Granada Hotel prop-

erty was carried on by some representative of the Cody Trust Company or the Chicago Trust Company or the Central Republic Trust Company or the City National Bank and Trust Company."

There is no evidence at all to support this statement.

(b) We object to the statement "Since 1931 Edward Ball was this representative and was on the payroll when this court took possession of the property in May, 1937."

329 Ball was appointed as one of the agents of City National at the time the City National took possession, not in 1931, but in 1935, and he was still its agent when the trustee in bankruptcy took custody. He was getting $50. a month, and earned it. It is not true that Ball since 1931 was agent of any of the parties above mentioned, notwithstanding the further suggested finding. "It is admitted by the pleadings and in evidence here that Mr. Ball was so retained to represent and to keep informed the Cody Trust Company and their successors in interest."

Mr. Ball was so retained when the trustee took possession, which was not in 1931.

(c) The statement in the last sentence "by various Chicago banks who held them as collateral for loans to Chicago Trust Company" is untrue. There is no evidence whatsoever in the record to this effect.

36. (a) We object to the opening statement "All these facts were known or available to City National."

There is no such evidence and, as above pointed out, the supposed facts are not facts.

(b) We object to the last sentence of the finding. City National did not become trustee until January 4, 1935—indenture trustee had no right of action against the underwriters—If it had, of what avail on and since January 4, 1935, with Codys and Central Republic insolvent, as well as Wenstrand. The indemnity mentioned ran to the surety company and not to the Granada estate.

37. We object to the entire finding. These statements represent counsel's conclusion of motives and secret intentions and suspicions, and are argumentative and not findings of ultimate fact.

330 We again object to the misstatement "that the bondholders' money has been used the second time to replace some furniture which Pick took away, and to purchase some fixtures from its successor."

38. (a) We object to the statement "At date of its

charter October 5, 1932, City National took over from Central Republic Bank and Trust Company and now continues as part of its trust department a personnel organized and called the Corporate Reorganization Division."

There is no evidence to support this.

(b) We object to the second, third, fourth, and fifth sentences of this finding. There is no such evidence. The testimony is that the City National furnishes facilities and personnel for the Committee, for the cost of which it is to be reimbursed.

(c) We object to the statement "When information is received that a default has occurred in a corporate issue, the method of operation is for City National to organize a bondholders committee. The names are chosen from among employees of Corporate Reorganization Division or other employees, nominees or officers of City National."

There is no such evidence, nor did the City National have anything to do with the organization of the Granada committee, the majority of whose members are not in any way connected either with the City National or with Central Republic Trust Company.

39. We object to the statement "For it there is a similar City National Bondholders Committee."

In view of the last preceding objection, the objection goes to the word "similar."

331 40. (a) We object to the statement "The committee has been at all times dominated and controlled by City National. It existed solely as a service unit in City National trust department."

There is no evidence whatsoever to sustain this, and it is untrue and directly in contradiction of the sole evidence of record.

(b) We object to the statements commencing in the eleventh line of this finding with the words "The committee has been at all times dominated," etc., and ending with the words "as its depositary" at the end of the finding.

There was no occasion to record minutes of a plan of reorganization, for no plan prior to these proceedings was formulated and submitted to the committee for approval.

41. (a) We object to the first five sentences of this finding.

These statements are just not so. The testimony of the witness Johnson is to the contrary and shows why the committees were formed and why and in what cases City National as trustee would enter into possession.

(b) We object to the statement "no serious effort has ever been made to reorganize said properties as a business unit. Rather the effort has been to prevent a unit reorganization of the three properties. Divide the bondholders, increase the expenditures, increase the difficulties of reorganization, has been the method pursued with reference to these three properties, which from the engineering standpoint and their manner of construction were intended to be operated as a single unit."

332 As to the effort to effect group reorganization of the three properties—these statements are untrue. The evidence is directly to the contrary, and is undisputed, and it shows that serious consideration was given, and further shows the circumstances which made it impossible to handle the three as a unit.

As to any duty to effect a group reorganization,—there was none, and there is strong argument that the duty was just the opposite.

42. (a) We object to the first two sentences of this finding which state conclusions of law already answered in our brief

(b) We object to the third sentence of this finding—City National did not consummate a course of action planned for a year, etc. The two owner corporations did, and it was not planned for a year. The evidence is directly contrary on all points. Nor did City National charge anything off its books. The charge-off was made by the corporation officials on the corporation's books.

(c) We object to the statement that "The charge (of which said sum is the unpaid balance) was made pursuant to the Barton contract."

The amounts which were being paid just prior to the time of the reduction of the charge were not those mentioned in the Barton contract.

43. (a) We object to the first sentence—The Granada has more unpaid taxes because it had to pay for furniture and fixtures, which in the case of the Arlington were part of the bondholders' security from the beginning. All available net income was applied by City National in re-

333 duction of taxes. The purpose of the reduction was to fix a fair and equitable rate instead of continuing to favor the Granada.

(b) We object to the implications contained in the second sentence—Mullins, receiver, and not City National, is

running the Manor, and the rate has been fixed by court order.

(c) We object to the sentence commencing "This deliberate purpose to favor the Arlington," etc.

There isn't any evidence that the reduction was forcibly made in any sense or of duress of any kind. The two corporations signed the agreement through their officers, who knew the facts and were satisfied.

(d) We emphatically object to the statement that "That contract" (the Barton contract) "remains in force at this time."

The contract is in evidence and it shows that it expired by its terms in 1933, if it had not sooner been terminated.

(e) We object to the statement and the implications thereof that "After trial of this suit Arlington, Inc., has refused to receive services under said contract since December 10, 1937; Arlington, Inc., is officered and controlled by City National employees, who have done this additional wrong to Granada."

This court has not undertaken to say whether Arlington, Inc. was under any obligation to continue to receive services. Moreover, any services received by it were from the trustee in bankruptcy and not by virtue of the Barton agreement, which expired in July of 1933 at the very
334 latest. Also, there is no evidence showing that Arlington, Inc., is "officered and controlled" by City National employees, and even if that was the fact Arlington, Inc., did not cease taking service until the Granada was represented by the trustee in bankruptcy and not in any way by City National, and the trustee in bankruptcy was demanding an exorbitant rate.

44. (a) We object to the statement in the first sentence that one set of attorneys represented Cody Trust Company, Wenstrand, and Ball.

This firm never represented Cody Trust Company, Wenstrand or Ball in any matter affecting the Granada property.

(b) We object to the second, third, and fourth sentences of the proposed finding, which are supported by no evidence and are argumentative.

45. We object to this finding in its entirety. All litigation engaged in was necessary and unavoidable. These parties have not delayed or obstructed the prompt clearance of the affairs of the debtor estate. On the contrary, counsel and the committee procured, presented, and had

approved the plan of reorganization, confirmed herein in record time within sixty days from the outset of the proceedings.

The rest of the statements are argumentative and legal conclusions.

335 46. (a) We object to the parenthetical statement in the first sentence. City National was not appointed successor trustee by the Committee but by order of the Superior Court.

(b) We object to the statement "it dealt with Debtor property as though it were the general owner of all Granada affairs."

There is no evidence to support this. Indeed, the Court in its oral opinion found quite the contrary, stating, "And I say that if a mortgage trustee is going to go into possession and stay in possession for a long period of years, then it has got to find ways and means and law to authorize it to act like an owner or take the responsibility."

(c) We object to the statement "In practice City National made itself general trustee far beyond any supposed authority under the order of Superior Court."

City National, when appointed successor trustee, took possession of all property which its predecessor had held and its predecessor turned over to it so that it held both real and personal property, including any funds on hand. Its powers as successor trustee were not derived from any order of the Superior Court but from Article VIII of the Trust Deed and by law. In fact the order of the Superior Court was entirely silent on the matter and had to do only with its appointment as successor "with the same rights, powers, duties and immunities" as had been vested in or imposed on the original trustee.

(d) We object to the statement "When City National, or the Committee, or the counsel, decided to take an action they did so as would an owner of the property, or they got stipulations and a Court order;"

Neither the City National nor the Committee procured any court order or stipulation or otherwise purport-
336 ing to confer further powers on the trustee or to authorize the trustee to do anything. There is no evidence anywhere in the record to support the court trustee's statement.

(e) We object to the concluding sentence of this proposed finding, reading, "In present reorganization case, City National and said attorneys filed in writing objection

and motion to dismiss on May 17, 1937, in an effort to thwart and stay all action by this court."

The statement is untrue and is shown by the pleadings to be untrue. The City National did initially object to turning over possession but neither it, the Committee nor their counsel ever objected to the approval of the petitions in these proceedings or to a prompt reorganization.

47. We object to this proposed finding in its entirety on the ground that the statements therein contained are scandalous and impertinent. Moreover, there is no showing of record of any act done by the trustee in excess of its authority, nor is there any showing of record of any action which the trustee could or should have taken which it did not take if such action was authorized and was proper. No act is specified by the court trustee, his proposed finding is most general. As applied to any given action which it is claimed the trustee should or should not have taken, it should be perfectly simple to find as a matter of law whether it did or did not have the power, and as a matter of fact whether the action should or should not have been taken.

48. (a) We object to the statement that Exhibit "X" provided an "estimated basis of compensation between Granada Hotel and Arlington Hotel."

There is nothing estimated about it, it was the agreement.

(b) We object to the statement "The evidence shows these attorneys at one time or another represented all persons and trust companies having to do with Granada finances, except perhaps Mr. Mateer."

There is no such evidence.

(c) We object to the statement that the Thuma suit was allowed to lag along.

The evidence is that the case was promptly heard, was held under advisement by the Chancellor for a year and was in the Appellate and Superior Courts of Illinois until 1933.

(d) We deny the statement that "these attorneys withdrew as counsel for Thuma and immediately appeared on the opposite side of the record as counsel for Chicago Trust Company,"

The attorneys were from the beginning counsel of record for both Thuma and Chicago Trust Company and continued as such until their interests became conflicting, which was at the time that the trustee filed the cross bill

for a complete foreclosure. Up until then the interests of Thuma and the trustee were common.

49. (a) We admit the truth of the first sentence of the proposed finding but object to the implications for the evidence is clear and undisputed that a unit reorganization was impossible and that being so, of course, there was not "presented any plan at any time to the bondholders or anyone else for the joint operation or unit reorganization of the three properties."

(b) We object to the second and third sentences of the proposed finding and also the last sentence of the proposed finding on the ground that they do not purport to be fact findings but conclusions of law. We object to them as conclusions of law on the grounds heretofore pointed out in our brief.

338 (c) We again object to the statement, "It is plain this adverse interest existed from the time Mr. Mateer ceased to own the stock of these three properties, and ceased to manage them as a unit enterprise. Control was taken from him in May, 1929, when Granada Apartments, Inc. was organized."

There is no evidence that Mateer ever owned the stock or that he ceased to own the stock or that he ever managed the three properties or any two of them as a unit enterprise. Nor is there any evidence that control was taken from him in May of 1929 or at any other time.

50. We object to the finding in its entirety. It is not a finding of fact but is essentially the conclusion of law and as such it has been fully answered in our brief. Any and all parts thereof which do have to do with the facts appear somewhere in prior findings and have been objected to on the ground that they are either wholly unsupported by any evidence or are directly contrary to the only evidence of record.

51. We object to this proposed finding in its entirety. There were no acts of force, fraud and secrecy. Control was not held for the purpose or with the effect of hindering, defrauding and delaying creditors of the debtor. The record testimony shows in detail just what efforts were made to reorganize and why they were unsuccessful. As far as the right of the mortgage to remain in possession is concerned, under the rules of property in the State of Illinois it had and has the right after default to take and hold possession until the debt is paid or in some way discharged.

52. We object to this in its entirety as a finding of fact. It is a conclusion of law and as such has been answered in our brief.

339 53. We object to the proposed finding that One Thousand Dollars ($1000) per month was the reasonable value of the services rendered by the Granada to The Arlington, first, on the ground that the Court did not so find in its oral opinion as above noted, and second, on the ground that the evidence does not support the finding. We have fully analyzed the evidence in the brief heretofore submitted and we refer to the brief for detail in support of the claim that the evidence does not support the finding.

54. We have above stated our objections to this finding.

55. We have stated our objection to this proposed finding under a separate heading above.

56. The same is true of our objections to the proposed findings here.

In addition, we here adopt and again urge the analyses made in our brief heretofore filed to show why these claims can not be sustained, although we again point out that the Court in its oral opinion never found that these claims aggregating approximately $114,000 were sustained by the court trustee.

57. We have under a separate heading above noted our objection to this proposed finding in its entirety. Also to findings 58, 59 and 60.

As To The Proposed Conclusions Of Law

We object and except to conclusions 61, 62, 63, 64 and 67 on the following grounds:

First, Taken even in the abstract they and each of them fail correctly to state the law.

340 Second, The facts of the case do not sustain the propositions in their essential parts.

Third, The propositions were recently rejected by the Court of Appeals for this Circuit.

We object to proposition numbered 66. The record does not show that the assets, property and business of the Debtor were depleted and that losses were sustained. The burden of sustaining his objections was on the court trustee.

We object to the conclusions stated at number 67 on the ground that the Court did not so find, and on the further ground that the court trustee has not maintained his objections filed by him on his own initiative.

We admit the correctness of the conclusion at number 69 but we deny its applicability to the case at bar. The beneficiaries were not "absent" as assumed by the court trustee but were in court as parties. It will be remembered that counsel for the mortgage trustee demonstrated this at the request of the Court.

We admit the correctness of proposition number 70 but deny its applicability to the case at bar.

We object to proposition numbered 71 and we refer the Court to our brief heretofore filed on this point.

We object to proposition numbered 72.

We object to proposition numbered 73 for the reasons first hereinabove stated. There is no provision in the Chandler Act which confers upon the District Court the right to make any chapter thereof applicable to pend-
341 ing litigation, excepting chapter 10 of the Act. There is no occasion to apply Chapter 10 which relates to reorganization for reorganization was consummated long before the Act became effective.

We object to proposition numbered 74 in which it is stated that the proposed findings will be considered and taken as sufficient abstract of the evidence in the record, for the reasons—

(1) They do not purport to be an abstract of the evidence in the record.

(2) The action was in bankruptcy and not in equity and this is true though the bankruptcy court had equitable powers. Accordingly, there was and is no requirement that the pleadings be printed and Rule 19 of the Court in respect of printing is inapplicable. Indeed, Rule 19 states as follows:

"Hereafter in all civil actions in which the complaint prays equitable relief, etc."

Bankruptcy actions are not civil actions and are expressly excluded from the new rules of civil procedure. See Rule 81 which says, "These rules * * * do not apply to proceedings in bankruptcy."

(3) In cases in which Rule 19 is applicable what is meant is that the parties shall prepare "an abstract of the proofs" for the use of the lower court. It, of course, was not intended by the District Court to prescribe by its rules what should be taken as a sufficient abstract for use in the Court of Appeals.

As To The Decree

We have the following comments:.

1. It was not entered on the 24th of September, 1938, so the date at the beginning and at the end of the
342 decree must be changed to correspond with the date of entry.

2. After the name "City National Bank and Trust Company of Chicago" ending in the fourth line of the second paragraph of the decree should be inserted the words, "as amended." (There was an order entered September 14, 1937, granting the City National leave to file an amendment to the proof of claim instanter and the amendment was filed).

3. After the statement "and upon the answer and counterclaim by Court Trustee filed September 9, 1937" should be inserted "and the answer of City National Bank and Trust Company of Chicago, as Trustee, to said counterclaim." (Such answer was filed September 18, 1937, pursuant to order entered September 14, 1937, granting leave to the City National "to file such answer as it may desire to the counterclaim.")

4. In the fourth from the last line on the first page there is a recital that the matter comes on to be heard, among other things, "upon the briefs and suggestions made by the parties." The word "suggestions" no doubt relates to the suggested fact findings and propositions of law lodged by the respective parties. Those submitted by us should be ruled upon and marked "Hold" or "Refused" or in some other appropriate way and should then be filed at or prior to the time of the entry of the decree.

5. It is recited in the third from the last line that the matter comes on to be heard also "upon arguments of counsel before the Judge in open court." This should go out. There was no oral argument.

6. We object to number 1 on page two for the Court found in its oral opinion that $10,000 was a reasonable fee for counsel for all services (including those mentioned
343 in paragraph 5 of Claim 9), of which the Court further found that $5500 had been paid leaving a balance of $4500.

7. We object to number 2 on page two for the reason that it is obviously inconsistent with the Court's oral opinion.

8. We object to numbers 3 and 4 on page two and

suggest that under the Court's oral opinion the petition, report and account of the City National should be approved in all respects. Any order offsetting fee allowances relates to paragraph 5 of Claim 9 and to the separate petitions of the Committee and counsel and not to the report and account of the City National, as Trustee, which report and account seeks allowance of no fees.

9. We object to number 5 on page two and submit that the answer, objections and counterclaim of the court trustee should be overruled and dismissed for want of equity, except to the extent of his claim that the mortgage trustee and the Committee are entitled to no further compensation (as is indicated at number 6 on page two).

10. The report and account of City National, as Trustee, set forth in detail various unpaid operating bills incurred by City National which it is averred the court trustee should assume and pay. There is no dispute as to the validity of these bills. The parties to whom they are owing have awaited the payment during the whole course of this litigation. There should be an order directing the court trustee and the New Company to assume them and to pay them forthwith.

11. Among the matters consolidated for hearing were the petition of the court trustee against The Arlington, Inc., and the answer of The Arlington, Inc., thereto. No disposition of the issue so raised was made in the
344 Court's oral opinion. In view of the matters which are contained in the Court's oral opinion, however, it would seem that the court trustee's petition against The Arlington, Inc., should be dismissed. This matter was mentioned orally to the Court on September 24, 1938, and it was suggested that until disposition is made by the Court The Arlington, Inc., is not in a position to distribute available dividends to its shareholders.

12. We assign the same objection to number 8 on page three as we assign to proposition of law number 73 above.

13. We except to the entry of any decree containing all or any of the provisions set forth at numbers 1, 2, 3, 4, 5 and 8 of the decree, as drafted, and to each and every the findings of fact and propositions of law as submitted by the court trustee.

As To The Findings Of Fact And Propositions Of Law Heretofore Lodged With The Court By City National Bank And Trust Company Of Chicago, As Trustee.

City National Bank and Trust Company of Chicago at the time of the filing of its brief and in December of 1937 lodged with the Court certain findings of fact and propositions of law which we now ask the Court to hold or refuse for the purpose, in so far as it is possible, of eliminating from further consideration those points, either of fact or of law, on which there may be no dispute. Such action will to a large degree tend at least to narrow the matter in controversy in this voluminous record. The findings of fact and propositions of law, as so lodged, are as follows:

"Findings Of Fact

The Court finds that:

1. Central Republic Trust Company, a corporation, as Trustee under trust deed recorded in the Recorder's
345 Office of Cook County, Illinois as Document 10161996, on March 22, 1934 took possession of the real estate and premises described in said trust deed and of all of the personal property located in the improvement thereon, and managed and operated the same until January 4, 1935.

2. Since January 3, 1935 City National Bank and Trust Company of Chicago has been, and it is now, the duly appointed, qualified and acting Successor Trustee under said trust deed Document 10161996.

3. That on January 4, 1935 City National Bank and Trust Company of Chicago, as such Successor Trustee, took possession of said property as mortgagee in possession after condition broken and operated the same continuously from January 4, 1935 to May 17, 1937, as of which latter date it voluntarily surrendered possession thereof to the Trustee in Bankruptcy herein.

4. On November 20, 1934 William L. O'Connell was duly appointed Receiver of Central Republic Trust Company by Edward J. Barrett as Auditor of Public Accounts of the State of Illinois, and at all of the times hereinafter mentioned was the duly appointed, qualified and acting Receiver of said Central Republic Trust Company.

5. Pursuant to order of the Superior Court of Cook County, Illinois entered in Cause 519151, said William L.

O'Connell, as such Receiver, filed in said proceedings last aforesaid the final report and account of Central Republic Trust Company as Trustee under said trust deed, and on February 11, 1935 the said final report and account was approved by order of said Court and said Receiver was directed to, and did, surrender to City National Bank and Trust Company of Chicago, as Successor Trustee, all property in his said final report and account described.

346 6. Such further proceedings were had in said Cause 519151 that City National Bank and Trust Company of Chicago, as such Successor Trustee, was substituted as complainant therein, and on February 18, 1935 it filed its supplemental complaint and the cause was referred to Robert C. O'Connell, a Master in Chancery of said Superior Court, who on due notice to all parties in interest took the proofs of the respective parties and filed his report in writing in the said cause, which said report was by order of said Court duly approved and the fees and charges of the said Master in Chancery were fixed, allowed and taxed as costs in said proceedings, following which and on the 18th day of December, 1936, a decree of sale was entered in said cause finding the amounts due, under said trust deed Document 10161996, City National Bank and Trust Company of Chicago for its own benefit and for the benefit of all of the holders of unpaid bonds and coupons secured by and outstanding under said trust deed and secured also by the chattel mortgage involved in this proceeding, which said decree also found, among other things, the amount due on the Receiver's certificate of indebtedness described in the plan of reorganization herein and fixed the relative priority of the liens securing the said several sums respectively found due the various parties.

7. In and by its complaint, as supplemented, so filed in said Cause 519151, City National Bank and Trust Company of Chicago, as Successor Trustee, sought, among other things, an accounting and statement of the amounts due it from Granada Hotel Corporation and Granada Apartments, Inc., and an accounting as to the precise amount due it under its said trust deed, and that upon the hearings of the said cause the Successor Trustee accounted to the defendants for all rents, issues, income, and profits

347 collected and disbursed by it for the period commencing January 3, 1935 and ending September 30, 1936; that in and by said decree the Court finds due City National Bank and Trust Company of Chicago, as Successor Trustee, the amounts due it under said trust deed after the

taking of such accounting, by reason of which the Court further finds that the said Successor Trustee has fully accounted for the period commencing January 3, 1935 and ending September 30, 1936.

8. On April 29, 1929 Granada Apartments, Inc., became and continuously since, to the time of the filing of the original petitions in these proceedings, has been the owner of the real estate and premises described in said trust deed Document 10161996.

9. The Superior Court of Cook County, Illinois in said Cause 519151 had jurisdiction of the said real and personal property and of the persons of Granada Apartments, Inc., Central Republic Trust Company, as Trustee under said Document 10161996, William L. O'Connell, as Receiver thereof, City National Bank and Trust Company of Chicago, as Successor Trustee aforesaid, and of the holders and owners of the indebtedness by said trust deed secured.

10. That in and by said trust deed Document 10161996 it is, among other things, provided:

(Article VIII, Section 2)

"In any case in which Mortgagor shall violate either condition to the provisions of Section 1 of this Article VIII or shall fail to perform any agreement or covenant hereunder, strictly and without grace, time being of the essence of this provision, Trustee shall, without notice, be entitled to the immediate possession of the mortgaged premises as for condition broken and may, by its agents, with or without entry, take actual or constructive possession of the mortgaged premises, together with all records, books, papers and accounts of Mortgagor relating thereto, or to Mortgagor's operation thereof, and exclude Mortgagor wholly therefrom, and Mortgagor agrees forth-
348 with peaceably to surrender to Trustee and its agents the possession thereof. In any such case the assignment of rents, issues and profits of and from the mortgaged premises hereby presently made or intended to be made shall cease to be suspended and shall become effective as of the date hereof and Mortgagor and all tenants of Mortgagor or other persons occupying the mortgaged premises shall forthwith attorn to Trustee and thereafter pay and account to Trustee for all and every such rents, issues and profits then accrued and unpaid."

(Article V, Section 3)

"Mortgagor covenants at all times and from time to time, upon the request of Trustee, to cause to be executed, acknowledged, verified and delivered instruments of chattel

mortgage and for extension of chattel mortgage upon personal property pertaining to operation of the mortgaged premises and all such assurances of title and additional papers and instruments and to do or cause to be done all acts and things which Trustee may deem necessary or desirable for effectually carrying out the intent hereof or for protecting and strengthening the security for payment of Bonds issued hereunder, or for confirming or assuring the lien of this Trust Deed as a first mortgage on the premises hereby conveyed and mortgaged, any appurtenances thereto and the rents, issues and profits thereof."

(Article VI, Sections 1 and 2)

"Trustee is hereby authorized (or, in case of refusal to act, the legal holder or holders of not less than twenty-five per cent. (25%) in amount of the Bonds hereby secured and outstanding at such time, is or are hereby authorized), but not required, whenever it may become necessary or advisable to do so by reason of the delinquency of Mortgagor in the performance of the appropriate covenant of this Trust Deed, if after demand in writing from Trustee such delinquency is not remedied within a reasonable time but not more than thirty (30) days (a) to procure or renew insurance and pay for the same, (b) to collect insurance moneys and pay the expenses of such collection, (c) to place said premises in proper condition and repair, (d) to discharge taxes or assessments or other charges levied, imposed or assessed upon the mortgaged property, or any part thereof, (e) to redeem the same from any tax or foreclosure sale or forfeiture or to purchase any tax or foreclosure title thereon, (f) to remove any mechanic's lien or other lien or encumbrance thereon, (g) to carry on the prosecution or defense of any suit affecting the security for the Bonds issued hereunder or to which Trustee and/or Bondholders as such may be party and to advance or expend the necessary money for any of said purposes, including the payment of reasonable solicitors', counsel and lawyers' fees and court costs, stenographers' charges, expenses for procuring evidence, if any, and any and all costs for the preparation for trial and/or trial of any such suit, and/or (h) to remedy or forestall any other default of Mortgagor hereunder, always excepting the payment of Bonds or Interest Coupons secured hereby.

349 "Mortgagor expressly covenants to pay to Trustee and/or to Bondholders all moneys so advanced or expended under the provisions of this Article, with interest

on each item at seven per cent (7%) per annum, as well as reasonable compensation for the service of Trustee hereunder, all of which sums shall be deemed a first lien on said premises prior and paramount to the Bonds hereby secured, and are hereby declared to be so much additional indebtedness secured by this Trust Deed and to be payable on demand in the same coin as the bonded indebtedness secured hereby."

(Article IX, Section 6)

"Any holder of the Bonds hereby secured accepts the same subject to the express understanding and agreement that every right of action, whether at law or in equity, upon or under this Trust Deed is vested primarily exclusively in Trustee as if trustee of an express trust, and under no circumstances shall the holder of any Bond or Interest Coupon have the right, alone or with other holders, to institute any action at law or any suit or proceeding in equity for the purpose of enforcing any payment, covenant or remedy herein or in said Bonds contained or to foreclose this Mortgage, unless Trustee shall, after thirty (30) days' request in writing by holders of not less than twenty-five per cent. (25%) in amount of the outstanding Bonds and upon having been tendered satisfactory indemnity, have refused to take the action requested or other appropriate action."

(Article XI, Section 2)

"Trustee shall not be answerable for the default or misconduct of any attorney, agent, agency or employee appointed or employed by it, if selected with reasonable care, nor shall Trustee be answerable for any error of judgment or for any act done or step taken or omitted by it in good faith nor for any mistake of fact or of law based on information or advice deemed authentic and correct. The officers, representatives, employees and attorneys of Trustee shall have the same immunities from liability as Trustee and each shall be liable only for his own intentional and wilful wrong-doing."

11. That during the period of its possession of said property as aforesaid City National Bank and Trust Company of Chicago, as Successor Trustee, retained as and for its compensation as Trustee in possession of said property a sum equal to four per cent (4%) of the gross rents, issues, income, and profits thereof (inclusive of the compensation paid to its agent, Hall), and the Court finds that the amounts so retained were the fair, usual, reasonable

and customary charges made in Chicago during said
350 period for operating, leasing and managing similar properties and collecting and disbursing the rents, issues, income and profits thereof.

12. Under the terms and provisions of the said trust deed the Trustee is entitled to reasonable compensation for itself and its agents for possessing, operating, leasing and managing said property and collecting and disbursing the rents, issues, income and profits thereof.

13. On, to wit, the 11th day of August, 1933, by order of the Superior Court of Cook County, Illinois entered in said Cause 519151, there was issued in said proceedings a Receiver's certificate of indebtedness in the principal sum of Eleven Thousand Five Hundred Dollars ($11,500), due thirty-six months from that date, with interest at the rate of five per cent per annum, which certificate by the terms of said order was a lien upon said real estate and premises prior to the lien thereon of said trust deed Document 10161996.

14. By order of said Superior Court of Cook County, Illinois entered in said Cause 519151 on March 16, 1934, Central Republic Trust Company, the then Trustee under said trust deed Document 10161996, was directed to assume liability for the payment of the balance due on the Receiver's certificate of indebtedness theretofore issued and then outstanding in said proceeding, and in and by said order it was further provided that the said certificate remain a lien in pursuance of its terms and provisions and of said order of August 11, 1933.

15. The furniture, furnishings, and equipment originally placed in the improvement on said premises were not paid for out of the proceeds of the first mortgage loan and that to secure the unpaid portion of the purchase price thereof Albert Pick & Company took a chattel mort-
351 gage thereon from Granada Hotel Corporation, and, default having been made under the said mortgage, it brought its action to foreclose the same in the Circuit Court of Cook County, Illinois in proceedings which progressed to a decree of sale, by virtue of which the furniture and furnishings were sold and purchased by International and Industrial Securities Corporation, but only after litigation in respect thereof had been carried without adverse effect on its interests to the United States Supreme Court. International and Industrial Securities Corporation intervened in said Cause 519151 and was permitted to remove the loose furniture from said premises,

but the Court reserved jurisdiction to determine whether the ozite, carpets, in-a-door beds, china and kitchen cases were fixtures and part of the security intended to be effected by the real estate trust deeds or whether they were removable personalty subject to the Pick chattel mortgage aforesaid. At and prior to the time of such removal the premises were refurnished, the unpaid portion of the purchase price being secured by the conditional sales contract now held by Continental Illinois National Bank and Trust Company of Chicago, as set forth in the plan herein.

16. Central Republic Trust Company, as Trustee under said Document 10161996, litigated the said fixtures question in said proceedings 519151 and in the Appellate Court in and for the First District of Illinois, and by way of petition for certiorari to the Supreme Court of Illinois, where it was held that the said items were not fixtures but were part of the security intended to be effected by the Pick chattel mortgage.

17. International and Industrial Securities Corporation was entitled and about to remove its said property. The earnings of the Granada were, and had been, insufficient to provide a fund sufficient to purchase new items in replacement of these or with which to settle the claim, or
352 with which to purchase the said items so owned by International and Industrial Securities Corporation. The removal of those items would have rendered the premises untenantable and would have materially injured the building itself. To provide the balance of the funds necessary to purchase the said items at a price of $22,500.00, the said Receiver's certificate of indebtedness was ordered to be issued and the face amount thereof was paid therefor to the Receiver and used by the Receiver, together with funds in its possession, to purchase the said ozite, carpets, kitchen and china cases, and in-a-door beds.

18. At the same time Central Republic Trust Company, as Trustee, demanded and obtained from all parties in interest the chattel mortgage and note mentioned in the plan herein, which for the first time gave the bondholders a lien on the furniture, furnishings and equipment as additional security for the payment of their bonds, such lien being subject to the Receiver's certificate of indebtedness and to the said conditional sales contract held by Continental Illinois National Bank and Trust Company of Chicago, as aforesaid.

19. On January 4, 1935, when City National Bank and Trust Company of Chicago took possession as Trustee as

aforesaid, there was a balance of $7,011.01 due and unpaid on said Receiver's certificate of indebtedness and on said conditional sales contract in the sum of $19,400.00, which balances were reduced to $4,000.00 and $3,000.00, respectively, through payments on account thereof by City National Bank and Trust Company of Chicago, as Successor Trustee.

353 20. The said balances, pursuant to the provisions of the plan of reorganization as confirmed herein, are to be assumed and paid in cash by the reorganized company.

21. On July 31, 1933, the value of the said personal property then located, as aforesaid, in the Granada Hotel, predicated on the then market value new, less depreciation, was $42,956.50.

22. The sum of $4,025.29 was necessarily, reasonably, and properly expended by City National Bank and Trust Company of Chicago, as Trustee, for the costs, fees and expenses incurred in contesting the original involuntary proceedings respectively brought under Section 77B of the Bankruptcy Act against Granada Hotel Corporation and Granada Apartments, Inc.

23. The said several unpaid bills and obligations mentioned in paragraph 24 of the report filed by City National Bank and Trust Company, as Trustee, herein were properly incurred and are charges against the estate of the Debtor herein and should be assumed and paid by the Trustee in Bankruptcy herein.

24. A sum not in excess of $600.00 per month was a reasonable charge to be made for the heat, hot and cold water, and refrigeration furnished by the Granada to the Arlington Hotel during the period extending from March 22, 1934 to May 17, 1937.

25. No refrigeration was furnished to the Arlington Hotel by the Granada after August 18, 1937.

26. A reasonable charge to be made for the heat, hot and cold water furnished to the Arlington Hotel by the Granada from August 18, 1937, to December 1, 1937 does not exceed $375.00 per month.

354 27. The sum $7,200.00 for heat, hot and cold water, and refrigeration furnished the Arlington by the Granada during the year 1933 was agreed upon in writing by and between Granada Apartments, Inc., the then owner of the Granada, and Warren-Hart Apartments Building Corporation, the then owner of the Arlington, prior to the time that Central Republic Trust Company,

as Trustee, entered into possession of either the Arlington or the Granada.

28. Under the zoning ordinances of the City of Chicago in effect March 27, 1935 and continuously since the Granada lobby space could not have been, and may not be, utilized for commercial purposes excepting for the operation of a dining room, and then without access to the street except through the lobby of the Granada and provided that no street window or other exterior display or other exterior sign might or may be used to advertise such use.

29. Structural changes and improvements must necessarily have been made to convert the ballroom and adjoining space to dining room and kitchen purposes.

30. The excess lobby space could not with profit to the Granada have been utilized for commercial purposes.

31. There is no competent evidence of record to establish the reasonable rental value of the excess lobby space of any part thereof.

32. At the time City National Bank and Trust Company of Chicago took possession of the Granada as Trustee there was a valet shop in the basement of the Granada, being maintained for the convenience of Granada tenants. The Arlington had been sending work to the Granada valet shop, which increased the volume for the operator thereof and enabled him to remain in the Granada premises 355 for the convenience of the Granada guests, and the said operator paid to the Arlington a commission for the work sent. The valet was not occupying space in the Arlington and the Arlington was at liberty to send its work wherever it pleased. If it had done so it would have gotten an equal commission without providing any space.

33. The house fund at the Granada at the time of the appointment of the Trustee in Bankruptcy herein had been there provided by City National Bank and Trust Company of Chicago, as Trustee. That after such appointment the said fund, together with other funds in the possession of City National Bank and Trust Company, as Trustee, was used to pay operating bills approved by the Trustee in Bankruptcy, and was fully disbursed for that purpose.

34. On May 25, 1937, City National Bank and Trust Company of Chicago, as Trustee, turned over to the Trustee in Bankruptcy the sum of $773.40, representing the balance of cash then in its hands as Trustee in posses-

sion over and above amounts held by City National Bank and Trust Company as Trustee under the indenture for the benefit of persons other than the debtor.

35. City National Bank and Trust Company of Chicago and its counsel advised the Trustee in Bankruptcy at the time that he demanded surrender by it of the moneys in its possession as Trustee under the indenture it would turn over such moneys to him on express order of court directing it so to do, notwithstanding that in their opinion the said moneys were not the property of the Debtor.

36. Individual electric refrigerators are more economical, efficient, sightly, and more desirable to the tenants than the brine system in operation at the Granada.

356 37. Adequate General Electric individual refrigerators could during the period of possession by City National Bank and Trust Company of Chicago, as Trustee of the Arlington, have been, and since have been installed in the Arlington Hotel at a cost which, together with three years operating and maintenance charges, does not exceed a sum equal to three times the annual charge requested by the Trustee in Bankruptcy from the Arlington for refrigeration supplied to the Arlington through the Granada brine refrigerating plant.

38. At any time during the period from March 22, 1934 to May 17, 1937 the Arlington could have installed its own heating plant and its own compressors and pumps to operate a brine refrigerating system and have operated the same so as to supply its own heat, hot and cold water, and refrigeration at an annual cost of $5,405.05, including in said amount all operating charges and fixed charges on the capital investment.

39. Granada Hotel Corporation was dissolved by decree of the Superior Court of Cook County, Illinois entered May 17, 1930 in cause there numbered 50985.

40. The Committee, long prior to the time of the filing of the petitions in bankruptcy herein requested Granada Apartments, Inc., and its stockholders to file a voluntary petition under Section 77B of the Bankruptcy Act to affect a reorganization, but they refused so to do until after the involuntary petition in these consolidated causes had been filed.

41. At and since the time of the appointment of City National Bank and Trust Company of Chicago, as

357 Successor Trustee under Document 10161996, Cody Trust Company and Central Republic Trust Company were insolvent, so that an action against them or either of them would have been unavailing.

Propositions of Law.

The Court holds as propositions of law that:

1. An involuntary petition filed under Section 77B of the Bankruptcy Act against a corporation organized under the laws of the State of Illinois and dissolved more than two years before the filing of said petition will not lie.

2. An involuntary petition filed under Section 77B of the Bankruptcy Act and predicated upon neither an act of bankruptcy nor a pending equity receivership confers no jurisdiction upon the Court in which filed so as to enable it to effect a valid reorganization in the absence of an affirmative answer filed to said petition by the debtor corporation admitting insolvency or inability to pay its debts as they mature, admitting the need for reorganization, and assenting to the jurisdiction of the Court for that purpose.

3. Inasmuch as the Supreme Court of the United States in the case of *Tuttle v. Harris,* 297 U. S. 225, held that the United States District Court was without jurisdiction to reorganize in the proceedings below, the Committee and the Trustee were justified in opposing and contesting that invalid proceeding.

4. Under the law of the State of Illinois the right of a mortgagee to hold possession for condition broken ceases when the mortgage indebtedness is paid or otherwise legally extinguished.

358 5. Prior to payment, or extinguishment, of the mortgage indebtedness by a distribution of new securities pursuant to a confirmed plan of reorganization, or by other legal means, the Court in a proceeding under Section 77B of the Bankruptcy Act in which no order of adjudication has been entered is without power to compel a mortgagee in possession for condition broken of real estate situate in Illinois to surrender possession to the bankruptcy court or to its temporary trustee appointed in said proceeding.

6. An order approving as properly filed and as filed in good faith a petition under Section 77B of the Bankruptcy Act is a final order and may not, more than thirty days after the date of its entry be vacated or set aside save for fraud as mistake cognizable in equity or except by consent of the creditors.

7. A trustee in bankruptcy whose bond has not been furnished and approved may not enter upon performance

of his official duties and is not vested with title to the debtor's property.

8. A decree of sale entered within four months of the filing of a petition in bankruptcy in proceedings brought to foreclose the lien of a mortgage made and recorded more than four months prior to the filing of such petition is no less valid than one entered more than four months before the filing of the bankruptcy petition.

9. The jurisdiction of the bankruptcy court is not paramount so as to supersede the jurisdiction orders and decrees of the state court obtained and entered more than four months before the filing of the petition in bankruptcy in prior proceedings for the foreclosure of a mortgage.

359 10. A mortgagee in possession of real estate situate in Illinois is without power to make a lease binding after redemption in the absence of express authority so to do.

11. A mortgagee in possession for condition broken is without power to make structural changes or improvements, even though increased revenues is assured on account thereof.

12. City National Bank and Trust Company of Chicago, as Trustee, was under no duty or obligation to seek from the parties in interest a grant of further powers beyond those conferred in and by the indenture under which it accepted the successor trusteeship.

13. Such further grant of power, if obtained from the mortgagor and the bondholders, would not be binding on the numerous junior encumbrancers whose liens were of record prior to the grant of further powers.

14. That upon the resignation of Central Republic Trust Company, as Trustee under said Document 10161996, filed by William L. O'Connell, its Receiver, in proceedings for foreclosure of said trust deed theretofore brought in the state court by said Trustee as representative of all bondholders and upon the refusal of Chicago Title and Trust Company to act as Successor Trustee, the Court, on petition of the Committee filed in said foreclosure proceedings, had power to appoint a Successor Trustee.

15. That the Committee under the terms of its deposit agreement was a bondholder entitled to seek appointment of a successor trustee in case one was required.

16. That in and by the orders heretofore entered herein for the filing of claims and confirmation of the plan of reorganization and for all purposes of the proceedings

herein City National Bank and Trust Company of Chicago has been recognized as and found to be the Successor Trustee under said Document 10161996.

360 17. That the decree entered in said Cause 519151 on December 18, 1936, as aforesaid, is determinative of the question as to whether City National Bank and Trust Company of Chicago is the duly appointed, qualified and acting Successor Trustee under said Document 10161996.

18. That the Statute of Gloucester in the counterclaim of the Trustee in Bankruptcy mentioned is penal in nature and not enforceable in equity.

19. That the said several matters complained of by the Trustee in Bankruptcy against City National Bank and Trust Company of Chicago, as Trustee, do not (with the exception of the averment of its failure to keep the incinerator and pump in repair) constitute waste at common law.

20. That the burden of establishing by the preponderance or greater weight of the evidence the matters and things complained of against City National Bank and Trust Company of Chicago, as Successor Trustee, by the counterclaimant in and by his said counterclaim rests on the counterclaimant.

21. That the counterclaimant has failed to establish by the greater weight or preponderance of the evidence the said several matters and things by him in his said counterclaim complained of, or any or either of them.

22. That any right of action against the underwriters of the Granada bond issue was vested in the bondholders and not in the Trustee under said Document 10161996.

23. Under the law of Illinois a court of chancery will not interfere to enjoin waste by the owner of a base or determinable fee unless the contingency which is to
361 determine the estate is reasonably certain to happen and unless the waste is of a character to charge the owner with a wanton and unconscientious abuse of his rights.

24. City National Bank and Trust Company of Chicago, as Successor Trustee, while liable for any breach of trust, is not liable for mere mistake of judgment nor for the honest and reasonable exercise of discretionary powers.

25. Since the Court cannot direct a trustee how to exercise a discretionary power, it cannot censure the Trustee or hold it liable for the choice it makes in the exercise of that power so long as it is not guilty of bad faith and is

not acting in a wholly unreasonable and arbitrary manner."

Defrees, Buckingham, Jones & Hoffman,
Attorneys pro se and for City National Bank and Trust Company of Chicago, Individually and as Trustee, and for said Bondholders Committee.

388 And on, to wit, the 15th day of July, 1938, there was filed in the Clerk's office of said Court a certain Transcript of Proceedings in words and figures following, to wit: Filed July 15, 1938.

389 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Ca n—65811.) * *

TRANSCRIPT OF PROCEEDINGS.

Before:

Hon. John P. Barnes, J.

Decision.

Claim No. 9.

390 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—65811.) * *

TRANSCRIPT OF PROCEEDINGS.

The following is a transcript of the proceedings had in the above entitled cause on Thursday, July 14, A. D. 1938, beginning at the hour of 2:00 o'clock P. M., before the Hon. John P. Barnes, one of the Judges of said Court.

Parties met pursuant to notice.

Present:

Messrs. Defrees, Buckingham, Jones & Hoffman, Represented by Don Kenneth Jones, Esq., Vincent O'Brien, Esq., and Tracy W. Buckingham, Esq.

Weightstill Woods, Esq., and other Counsel.

And thereupon the following proceedings were had herein:—

391 The Clerk: 65811. Granada Apartments, Inc., for decision.

The Court: You may be seated, gentlemen, if you can find chairs.

I went over the briefs in this case immediately after their filing, and then put them away for some weeks or months, and then went over them again carefully. And I have reached some conclusions which I will now express to you.

The questions presented to the Court arise on final reports of a mortgage trustee-in-possession, and on objections thereto, and on the application of the mortgage trustee, a Bondholders' Committee, and counsel for the mortgage trustee and Bondholders' Committee, for allowances of fees, and objections to such applications for allowances of fees by the Court Trustee, in this 77B proceeding.

The subject matter of this 77B proceeding is a so-called apartment hotel on the North Side of the City of Chicago, known as The Granada. I think the name of the debtor is, Granada Apartments, Inc.—if I am not mistaken.

The real estate and building of that debtor was en-
392 cumbered by a first mortgage bond issue, of which $485,500 principal amount of bonds were outstanding. Of these bonds, $331,600 principal amount were deposited with the depositary, the City National Bank and Trust Company. Is it the City National Bank and Trust Company?

Mr. O'Brien: "of Chicago."

Mr. Woods: That is right.

The Court: And in respect of these $331,600 principal amount of bonds, the Bondholders' Committee in question acted.

This property was in court for a long time; just how long, I don't remember, but it was in the State Court for a long time.

Mr. Bickel and Mr. Sturm, of the City National Bank and Trust Company, testified that the City National at all times did the actual work of managing the property and handling the finances from the date of its organization on October 5, 1932.

First, the Chicago Title and Trust Company was appointed receiver in the State Court. Perhaps that appointment might be said to be in name only, because while it was appointed it was directed not to take possession.

And later The National Republic Bank and Trust
393 Company was appointed. I don't remember whether

The National Republic Bank and Trust Company was appointed receiver, or whether it went into possession as mortgage trustee-in-possession; but whatever The National Republic Bank and Trust Company was supposed to do, whether it be as receiver or trustee-in-possession, was done by the City National Bank and Trust Company, as agent.

I do not know that these facts are all material to what I am about to conclude, except that they do give us the setting for the controversy.

I think I will first discuss the fees which have been requested.

The Committee, which is made up of officers and employes of the City National Bank and Trust Company, for its services asks the sum of $10,000; for out-of-pocket expenses of the Committee it asks the sum of $2,285.21.

For the services of the City National Bank and Trust Company as depositary, the Committee asks the sum of $3,200.

For the services of the counsel for the Committee and the Trustee, the sum of $30,000 is asked.

The City National Bank and Trust Company has
394 had not less than $7,041.13 already, for management fees.

I got those figures, $7,041.13 from one place in the papers. At another place I found that the City National Bank and Trust Company, as trustee-in-possession, for management there from January 4, 1935, to May 1, 1937, had received $8,325.15. And then in another place I find that the City National Bank and Trust Company, for services in foreclosure desires the sum of $2,560.00.

And I was interested to know the aggregate of these items. So I added up the $30,000 requested for the attorneys' fees, the $10,000 requested for the services of the Committee, the $2,285.21 requested for the out-of-pocket expenses of the Committee, the $3,200.00 requested for the services of the depositary—the City Bank and Trust Company, the $7,041.13 already received by the City National Bank and Trust Company for management—assuming that it was $7,041.13 instead of $8,325.25, and disregarding what the City National Bank and Trust Company received as agent of the National Republic Bank and Trust Company, and I had an aggregate of $52,526.34.

And then I observed that I had omitted that $2,560.00
395 which the City National Bank and Trust Company desires for its services in foreclosure; and adding

them all together I get $55,086.34, which is a good round figure, something in excess of 15 per cent of the amount of bonds on deposit with the Committee.

I looked into this claim of the depositary, of $3200 for depositary's fees, as depositary for the Committee, and I find that it issued 450 certificates, of which 71 were transfers, and 379 original deposits. That is $7.11 a certificate for every certificate issued, including the transfers. That is more than three times what the service is reasonably worth.

I think a reasonable fee for the issuance of a certificate is not to exceed $1.25 a certificate; but in order that no injustice might be done, we might say a maximum of $2.00 a certificate; that would be, 2 times 450, or $900; and then in order just to make doubly sure that no injustice would be done, we might add a docket fee of $250; and all that we would get would be $1,150, which is almost exactly a third of the fee requested as depositary.

The attorneys have already had $5,500. What this
396 building is worth, I don't know; and I do not know that there is any value stated in the record.

Mr. O'Brien: $400,000.

The Court: What?

Mr. O'Brien: 400,000, the record shows.

The Court: How do you justify that?

Mr. O'Brien: That is the record.

The Court: That is what?

Mr. O'Brien: That is the record.

The Court: That is the record?

Mr. O'Brien: Yes.

The Court: Well, if it is a $400,000 building, it has been a $400,000 building that could not pay its taxes under the management of your client.

The services of counsel for the Trustee and for the Bondholders' Committee have extended over a long period, longer I think than was necessary.

Counsel have already had $5,500. I think a reasonable fee would be not to exceed $10,000; leaving a balance, if anything were due, of $4,500.

The Committee, for its services, asks $10,000. Now, how any man could justify that demand, I don't know.

Those men who make that claim are officers of the
397 Trustee. I think the Court, or anyone else looking at the facts in this case, is justified in concluding that

the Committee was organized to bring business to the Trustee, and keep it there.

The assistance of a committee is sometimes justified on the theory that it speaks for a part of the bonds only, that part which has been deposited with it, while the Trustee acts for all of the bondholders, and therefore the Trustee is entitled to a fee, and the Committee is entitled to a fee; the Trustee because it acts for all the bondholders, the Committee because it acts for the bondholders who have deposited with it. But how the officers of the Trustee can constitute themselves a committee and ask for fees additional to those allowed to the Trustee, I cannot figure out. How such a committee can be a protection to the Trustee I cannot figure out. How there can be any justification for the expenses of such a committee, I cannot figure out. But assuming that their existence is justified—there were five of them—I think the maximum fee that they could be allowed for their service would be $200 apiece, or $1,000. Assuming that all of this out-of-pocket expense of $207.24 is justified, assuming that
398 the depositary is entitled to $1,150, the maximum that the Committee could be entitled to would be $4,157.24.

I think a reasonable fee for the Trustee for its fee, if it is entitled to anything over and above that management fee which it took in the sum of $7,401.13—or $8,325.15, whichever be correct; if it is entitled to anything over and above that, I do not think it could be more than $500. I can't see any justification for anything over and above what it took for its management fee.

The best I can make out of it, the most that could go to the attorneys would be $4,500; $4,157.24 to the Committee; and $500 to the Trustee—the more I think about it the less justification I can find for that $500 when the Trustee has already had this $7,041.13.

Now, that is the matter of fees. And I have disregarded the objections and the complaints which the Court Trustee has made. I am going to take those up now.

The Court Trustee says that the City National Bank and Trust Company connived at the payment of moneys out of the receivership for the buying of kitchen cab-
399 inets and carpet linings which had been authorized be taken out of the building, and that those sums which were paid, ostensibly for kitchen cabinets and carpet linings were in fact paid to take care of the liabilities of third persons on bonds given in this and other courts,

which liabilities aggregated large amounts, for which sums neither the bondholders nor the debtor were liable; that is, the moneys which were in fact paid to discharge those liabilities on injunction bonds, were ostensibly paid to buy kitchen cabinets and carpet linings, and were improperly paid.

That controversy has had the attention of the Court in another connection. I have within the week filed a transcript of some observations I made in respect of Claim 8 —Claim No. 8 in this proceeding. I think all, or substantially all of the facts which were before me on Claim 8 were before me in this matter now before me; and I now refer to what I said within the week on Claim 8 as being applicable here.

Now, it will be said that the City National Bank and Trust Company did not issue that receiver's certificate, that it was not receiver, or that it was not Trustee
400 at the time of the issuance of the receiver's certificate which was issued to pay for those liabilities on those injunction bonds. It is true. But it was agent for the Trustee or for the receiver, and it and its officers, the Bondholders' Committee, and its counsel arranged for the giving of that receiver's certificate and the payment of the additional sum of $13,000—the receiver's certificate was in the sum of $11,500, and there was a further sum of $13,000 in cash, paid out of the funds of this debtor.

The City National Bank and Trust Company and its officers and its counsel, arranged for that issuance of that receiver's certificate, and for the payment out of that $13,000. Even if it is not liable for all of that, it did make payments on account of that receiver's certificate, knowing all the facts, and knowing that all of the facts were not communicated to the Court that purported to authorize the issuance of that receiver's certificate. That is one of the complaints the Court Trustee makes against the City National Bank and Trust Company.

Another complaint he makes is that the City National Bank and Trust Company in managing this property did not do all that a reasonably prudent person should do
401 to rent the lobby space in this Granada Hotel.

It seems that this Granada Hotel was built as the central building of a group of hotels. In it, was placed a power plant, a heating plant which was designed to accommodate the Granada and the four other hotels to be erected. Included in the Granada was a large amount

of public space, apparently designed to serve as a meeting place for the people in these other four hotels, and with the result that this building belonging to the debtor now before the Court had an excess of public space—a large excess of public space, more than was needed for the people living in the building.

The record discloses that the City National Bank and Trust Company made no effort to use that space so as to bring in a profit to the debtor. Now, the Trustee states a great many reasons why it could not do anything about it. The zoning ordinance was one reason. The limited power of a mortgage trustee-in-possession, was another reason.

Well, now, this is the way the Court views a matter like that: If a mortgage trustee is going to so act that it goes into possession to stay in possession for a long period of years, then it has got to find law that will
402 authorize it to act like an owner. And no owner over a long period of years allows a large amount of space to go vacant in a building that he may own. And I say, that if a mortgage trustee is going to go into possession, and stay in possession for a long period of years, then it has got to find ways and means, and law to authorize it to act like an owner, or take the responsibility.

The court trustee further says that the City National Bank and Trust Company, without warrant reduced the rental which was being paid by the Arlington, another building, for heat and power and light. I think the Court Trustee is justified in his contentions.

The City National Bank and Trust Company was carrying water on both shoulders. The burden is on it to show that the changes which it made in amounts being charged for that service, were warranted. I do not think it has met that burden.

I think the effort of the City National Bank and of the Bondholders' Committee, and the desire, was to stay in possession, and collect the management fees as long as possible. I think that was the primary intent. Maybe
403 they didn't realize it themselves, that that was their purpose; but I do not think that they had any deep concern about getting this property out of court, getting it into the hands of the real owners. I think their real concern was to keep it, keep the management as long as they could, and collect as much for it as they could. That is the impression I get.

I have deliberated quite a long while as to whether or not I should charge this trustee with anything over and above the amount which would otherwise be payable to it as fees and disbursements. That was one reason I put these briefs away and let the matter rest for two or three months. I don't want to do that bank any injustice, but I think it has done that property some injustice.

Now, upon consideration, I have concluded that certainly the Bank will not be harmed if I set off the claims which the Court Trustee has against it, against its claims for further fees and allowances, and the further fees and allowances of the Bondholders' Committee, the Trustee's officers and employes who act as a committee. So we will leave these parties just where they find them—where I now find them. The Trustee will not be paid any
404 further moneys; the Bondholders' Committee will not be paid any moneys; and if the Trustee desires its counsel to have any further moneys it will have to compensate its counsel, because there will be no further allowances to the Trustee for its counsel, no further allowance to the Bondholders' Committee.

Counsel for the Court Trustee may prepare, and on notice, present findings of fact and conclusions of law, and a decree consistent with what I have stated.

Counsel for the Court Trustee may also, within a short day, submit to me a transcript of what I have said at this time. I will look it over, and make any grammatical changes that I deem necessary and will then ask the Court Trustee to re-write it, and I will file it. I will try not to make any substantial changes in it.

(Which were all the proceedings had in the above entitled cause at the time and place aforesaid.)

Let the foregoing be filed of record:

John P. Barnes,
Judge.

405 And afterwards, to wit, on the 2nd day of May, A. D. 1939, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit: Findings of Fact and Conclusions of Law.

406 IN THE UNITED STATES DISTRICT COURT. Filed May 2, 1939.

(Caption—65811)

Equitable Relief Sought.

Claim No. 9 and Petitions.

Counterclaim by Court Trustee.

THE COURT MAKES AND RECORDS THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW AFTER FULL HEARINGS IN OPEN COURT, UPON ISSUES AND PLEADINGS, MENTIONED BELOW IN PARAGRAPHS 5, 6 AND 7.

I. History of Pleadings and Trial.

1. The Debtor herein, Granada Apartments Inc., a corporation, on April 23, 1937, filed its petition asking relief under all pertinent sections of the Bankruptcy Act of 1898 as amended and supplemented by Acts of Congress, and thereafter on May 17, 1937, the said petition together with an involuntary petition which has been filed at Danville and transferred to Chicago, were both approved as properly filed; and were consolidated as one case 65811 in this Court.

2. Weightstill Woods by order of this Court entered May 17, 1937, was appointed, and by order May 24, 1938, now remains the duly qualified and acting Federal Trustee for estate of Granada debtor in the reorganization proceedings, under Chapters II and X of amended law.

3. This Court by order July 14, 1937, confirmed a plan of reorganization for the property and affairs of Granada debtor; and by orders July 14, 1937, and thereafter, has reserved full power and jurisdiction to hear and determine all matters now presented. Pursuant to said plan all Granada trust deeds made in 1928 as hereinafter mentioned, have been cancelled and released of record February 10, 1938, upon written request by the bondholders committee.

4. Weightstill Woods filed his bond and qualified and has acted since said appointment as Trustee in Bankruptcy for the Debtor; all pursuant to reorganization provisions of Bankruptcy Act; and further said Trustee by order of this Court May 17, 1937, was directed to de-

mand and take possession and control of all the assets and property of the Debtor and to carry on the business of the Debtor pursuant to the orders and direction of the Judge, and said Trustee has been since said date authorized to defend, and is now carrying on this litigation, by order of the Court.

5. Pursuant to an order by the Judge entered May 24, 1937, directing claims to be filed, City National filed its claim No. 9 on June 23, 1937; and thereafter Weightstill Woods as Court Trustee filed objections and more specific objections to Paragraph 5 and later paragraphs of said claim, which claim and objections were reported by Special Master Carl R. Chindblom to the Judge for disposition, and preliminary hearing was had on July 14, 1937, and continued for disposition on September 14, 1937.

407 6. Thereafter on August 30, 1937, City National voluntarily came before the Judge and obtained permission and filed in this Court its petition and report for settlement and approval of its accounts about Granada Properties, claiming to be former Trustee by appointment of Superior Court of Cook County, in possession and control of Debtor property and affairs prior to May 17, 1937, when the Court Trustee had possession; whereupon the Judge of this Court ordered all parties in interest to plead thereto within 10 days. Accordingly on September 9, 1937, Weightstill Woods, as Court Trustee, filed his answer and counterclaim by way of supplement to said objections and as further defense to the claim filed June 23, 1937, and to the petition filed August 30, 1937, by City National.

7. On September 14, 1937, Charles S. Tuttle, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer claiming to be a Granada first lien Protective Bondholders Committee under deposit agreement dated April 25, 1933, filed their petition for an allowance of fees and expenses and also a separate petition was filed asking reasonable compensation for their attorneys, Defrees, Buckingham, Jones and Hoffman. Said persons by their own voluntary petition had come on May 24, 1937, and were given leave to intervene to present a plan which as modified was confirmed on July 14, 1937. These petitions by said Committee for fees and allowances, were referred to Special Master to take and report evidence, and upon the coming in of his report, the Judge ordered that hearings upon said petitions be consolidated

with the main case upon City National accounting petitions, and be made a part of the record to be used in preparing findings and briefs for consideration by the Court.

Pursuant to said plan, all the old bonds and all old corporate stocks, have been cancelled and surrendered, and new participation certificates issued in April, 1938.

The new certificates were issued to individual owners; they were not issued to said Committee. Charles S. Tuttle died on September 29, 1938.

8. A unit record has been made up by agreement of counsel, consisting of three volumes of evidence and exhibits, which has been certified by the Court and filed as the record of this consolidated case now under consideration by the Court; and one volume of assembled pleadings has been filed with the Clerk of this Court. Opinion by the Court was filed in writing and directions given for preparation of these findings and for a decree.

II. Jurisdiction.

9. The Court has, by virtue of said pleadings, by voluntary action of the parties and orders, obtained exclusive jurisdiction of all the property, assets, business and affairs of the Debtor wherever located; and by virtue thereof and the facts herein stated, the Court has jurisdiction of the subject matter of said pleadings; and has jurisdiction of the persons of City National Bank and Trust Company, a corporation, and said Bondholders Committee and their counsel; and has full authority to enter a decree for the payment of the moneys due to Debtor Estate and to Court Trustee, as claimed by said answer and counterclaim filed herein on September 9, 1937, and as supported by the evidence in the record. Hearing of evidence before the Judge in open court lasted from day to day for about a month. The assembly, consolidation and joinder of claims, pleadings, hearings, evidence and proceedings now here for disposition has been properly made either by request and agreement by the parties, or after hearing of all parties, by appropriate orders by Judge of this Court.

408 10. City National, Bondholders Committee and their counsel by pleadings filed, agreements made and evidence offered before the Judge in open Court, have all consented to and conducted here a plenary litigation.

They have asked the Court to decide a plenary accounting in equity. Upon this record made by pleadings, petitions and evidence, said respondents cannot be permitted to say that any of them do not consent and cannot be permitted to say that the proceedings were or are summary. These proceedings are plenary. The Judge deems that application of Chapter II and Chapter X of bankruptcy amendments approved by the President June 22, 1938, to this litigation is practicable and desirable. The decree herein shall so provide.

III. Findings of Fact.

From pleadings, admissions and evidence of record, the Court finds these essential facts:

11. In 1924 one Fred Mateer proposed to build a number of hotels near Arlington Place, Chicago. To finance the enterprise he secured the assistance of Chicago Trust Company. That Company had a real estate department which was financing similar properties. This real estate department was in charge of three men named Cody, Lewis H. Riddle and other persons. Chicago Trust Company as a house of issue financed these hotels with construction loans consisting of bonds in small denominations sold to the public. A copy of the prospectus upon which the Granada bonds were sold is in this record. It specifically states that the furniture and fixtures at Granada are part of the security for the bondholders' money, in addition to the real estate at Arlington Place consisting of land and hotel building.

12. This Granada Hotel includes many unusual features. It was to be and became the central plant to serve several other hotels; two of these hotels were: the Arlington Hotel at 530 Arlington Place, just across the street from the Granada; and Lincoln Park Manor Hotel on Fullerton Avenue, just across the alley to the rear of the Granada Hotel. In 1924 the Basement of Granada was constructed and equipped and covered over. With each of said hotels it was connected by a tunnel. This Granada Basement houses the machinery for supplying heat, hot and cold water and refrigeration service to Arlington Hotel and Lincoln Park Manor Hotel. The pipes that carry these services go through a tunnel under Arlington Place to Arlington Hotel, and through a tunnel under the alley to Lincoln Park Manor Hotel. In 1924 the

Arlington Hotel was built, and the Lincoln Park Manor was built, each having a separate corporation and a separate construction bond issue. Mr. Mateer owned the corporate stock. After they were in operation and using the machinery and services from the basement of the Granada, the Granada itself was built and the temporary covering over the basement was taken away. For several years there was in the Granada a Central telephone service, and a Central lighting service, a central library and other services for the Granada Hotel, the Arlington Hotel, the Lincoln Park Manor Hotel and other Hotels. These special services from time to time have been discontinued. But when these proceedings began, the Granada property continued furnishing heat, hot and cold water, and refrigeration services to the Lincoln Park Manor and the Arlington property.

13. The plan of Mr. Mateer was to have, and for many years he did have extensive social life at the Granada as a Central place for the assembly of guests and prospective guests from the several hotels which he had built
409 and was operating as a business unit. In order to do that, the plan of construction of Granada included a large amount of public space on the street floor of Granada including an extensive solarium, writing-room, ballroom and a very large lobby and extra office space. Mr. Mateer also began an inter-hotel publication called "Topics" which ran monthly until July, 1937 for two or more of said Hotels. All of these hotels feature small apartments. They are similar in layout and physical construction, and seek permanent rather than transient occupancy.

14. Granada Hotel Corporation, an Illinois Corporation (not the debtor), was organized and signed the bonds marketed in 1924 by the Chicago Trust Company as a house of issue. Contrary to prospectus and agreement, there was a failure by Chicago Trust Company and its counsel to see to it that the furniture and fixtures in the Granada Hotel were paid for out of the proceeds of that loan. Albert Pick & Company of Chicago supplied the furniture and fixtures for the hotel on open account and chattel mortgage. They charged Granada Hotel Corporation more than One Hundred Twenty Thousand Dollars ($120,000). What became of that much furniture is not shown by the record.

15. By 1928 Pick and Company had collected money due it on open account, and was asking balance payment for the furniture described in this chattel mortgage. By

this time the Codys and Louis W. Riddle and associates had separated from Chicago Trust Company and had organized the Cody Trust Company as a new house of issue. There was need to protect Chicago Trust Company and all persons who had participated by placing their names in the prospectus to the bondholders in 1924.

16. In 1928 a refinancing of the Granada situation was carried out by a new first mortgage and a larger second mortgage than had been used in 1924; Two Hundred Thousand Dollars ($200,000) of the new first mortgage issue was sponsored by Chicago Trust Company; and the remainder of the first, being Three Hundred Twenty-Five Thousand Dollars ($325,000) and all of the second being Three Hundred Sixty Thousand Dollars ($360,000) was sponsored by Cody Trust Company. Chicago Trust Company was Trustee named in both trust deeds for the new financing. The increase over 1924 was about Three Hundred Thousand Dollars ($300,000). No one has shown what became of that additional money. A prospectus was issued by Chicago Trust Company, and a separate one by Cody Trust Company. Both of these documents are in the record; they repeat the announcement made to the bondholders in 1924, that the security includes the furniture and fixtures at Granada Hotel. Again there was a failure to pay off the claim of Albert Pick & Company, out of the proceeds of the new financing.

17. In 1928 Albert Pick & Company, in the Circuit Court of Cook County reduced its chattel mortgage to a decree, and advertised a sale of some personal property at the Granada Hotel described in this chattel mortgage. Cody Trust Company sought to stop this sale. It had an employee or nominee named Wenstrand. He made claim to live in the State of Iowa, and on that claim filed a suit in this Court to enjoin sale by Pick under its chattel mortgage decree. Wenstrand claimed that he had purchased all personal property at Granada from the buyer at a sheriff's sale upon a judgment obtained by a fuel merchant at Chicago, who had furnished oil at Granada and had taken a judgment upon non-payment of his
410 bill. In the Wenstrand suit in this Court, bonds were given of $5,000, $20,000 and finally $40,000 to stay the sale.

18. Judge Wilkerson found against Wenstrand and dismissed his suit. An appeal was taken to the Circuit Court of Appeals. That Court affirmed Judge Wilkerson. (38 F. 2d 25, March 10, 1930.) The matter was

taken to the Supreme Court of the United States, which Court refused to review the previous ruling. (281 U. S. 768, June 2, 1930.) When the mandate was returned to Judge Wilkerson, suggestions of damages were filed by Pick upon the injunction bonds, and hearings were had which led to a Master's Report of evidence. Damage of Fifty Thousand Dollars ($50,000) were asked against Wenstrand and against Indemnity Insurance Company of North America, the surety on the Wenstrand Bonds.

19. While these damage proceedings were pending Albert Pick & Company again advertised its sale and again sought to take some personal property out of the Granada Hotel. To protect those who initiated the bond issue and sold the bonds, another employee or nominee of Cody Trust named Thuma, was now used to file on June 10, 1930 a suit for partial foreclosure in the Superior Court of Cook County upon a claim of default upon certain interest coupons of the 1928 second mortgage Granada issue. (Interest on Granada first mortgage bonds was paid until 1932.) The Superior Court issued a restraining order. Pick came into that proceeding to assert its claim under its decree in the Circuit Court. Eventually the Superior Court authorized Pick or Successors to take away from the Granada Hotel some unattached furniture; such as chairs, tables, and lamps. This order was executed about August, 1930. The Court reserved the question whether the in-a-door-beds, carpets, china, cabinets and other items were fixtures and part of the real estate. In 1933 this reserved question was determined in favor of Albert Pick and Company after an appeal to the Appellate Court of Illinois (269 Ill. App. 484), and a certiorari to the Supreme Court of Illinois.

20. When the Superior Court determined that some loose furniture might be taken away by Pick, the order was executed by removal from one apartment at a time, new furniture being supplied from another source by purchase for the hotel; as part of this action by direction of those initiated the bond issue and sold the bonds, a conditional sales contract was issued to La Salle Furniture and Supply Company for Thirty-five Thousand Dollars ($35,000). That Company was not a business firm. It was a corporation organized by Cody Trust Officers and their counsel for this one transaction. The bankers thus made their own collateral. On this contract from time to time payment from Granada moneys have been made by which said contract was reduced to Three Thousand Dollars ($3,000) when

these proceedings were begun. For this sum claim was made and allowed in this Court in January 1938 in favor of Continental Illinois National Bank and Trust Company, who contend the plan approved in this Court provides for payment of said sum in cash. Respondents prepared and presented said plan to this court.

Later, on January 17, 1939, this Court vacated said allowance, but gave permission for said Continental Bank to file a claim to be heard on the merits.

21. Chicago Trust Company and the Central Trust Company consolidated in July 1931 to become the Central Republic Bank and Trust Company, whereby that company by statute claimed to be successor trustee under the 1928 trust deeds. Its name later was changed to Central
411 Republic Trust Company, and on October 5, 1932, City National Bank and Trust Company was organized to take over its deposit banking business.

22. As a new hedge against the failure to pay off Pick claims out of the 1924 trust deed (which security was a construction bond issue) the Cody Trust Company and their Attorneys, in the spring of 1929 organized a new Illinois corporation, Granada Apartments, Inc. To this new Granada Apartments, Inc., an Illinois corporation, which is the Debtor in these present reorganization proceedings, sundry assets of old Granada Hotel Corporation were conveyed, but the new corporation assumed only the 1928 refinancing first and second mortgage bond issues. There was no assumption (by Granada Apartments, Inc.) of furniture indebtedness. This was expressly excluded along with claims of all the general creditors of the Granada Hotel Corporation. Having made the 1928 issue in this manner, the bankers used some of it to retire the 1924 issue, but did not pay off the furniture indebtedness.

23. This Granada Apartments, Inc., from its beginning was officered by employees of Cody Trust Company, and was wholly under its control. Mr. Mateer definitely passed out of the enterprise. This corporation never had an independent will of its own. An agreement was made between Chicago Trust Company and Cody Trust Company, whereby the latter (as between them) had the duty to see that the Pick claim was disposed of out of the proceeds of refinancing of 1928. This was never done. When the Thuma partial foreclosure was filed June 10, 1930, the Chicago Title & Trust Company was appointed as nominal receiver, but the order provided it should not disturb the Cody management, then in control of Granada Hotel and revenues.

When in 1933 it had been finally determined by State Courts that the successor of Pick could remove the in-a-door beds, china cabinets, carpets, etc., and they wished to remove the same, an agreement was negotiated by Edward Hall, another employee and nominee of the Cody Trust Company and City National, who was then in charge at Granada, co-operating with their attorneys. Thereby the right established in Superior Court to remove said fixtures from the hotel was sold to the Central Republic Trust Company, as successor Trustee under the 1928 refinancing trust deed. To carry out this agreement Thirteen Thousand Dollars ($13,000) more money was taken from the Granada treasury, and Eleven Thousand Five Hundred Dollars ($11,500) was borrowed from Indemnity Insurance Company of North America.

24. This Insurance Company as surety on the Wenstrand bonds in this Court and on similar bonds in other appeals about the Pick litigation, was defending against claims by the successor Albert Pick & Company for damages on said several bonds. Indemnity Insurance Company of North America (I. I. C. N. A.) wished to be released from all those damage claims and suits. A stipulation was signed by attorneys and some parties in the Superior Court case, and upon that an order was entered directing the Chicago Title and Trust Company to issue a Receiver's Certificate to obtain money. The money was furnished by surety on said damage bonds, Indemnity Insurance Company of North America. That is a surety company; it is not a banking firm. From the moneys thus obtained, Two Thousand Dollars ($2,000) was paid to Central Republic Trust Company for Defrees, Buckingham, Jones & Hoffman, as attorneys' fees, and the balance was paid to the successor of Albert Pick & Company. Services of said attorneys were performed to protect persons other than the bondholders. Since then Seventy-five
412 Hundred Dollars ($7500) additional has been paid from Granada funds in reduction of the receiver's certificate, so that it now has a face balance of Four Thousand Dollars ($4,000). All said sums were paid primarily for benefit of persons other than Granada debtor and other than Bondholders. Respondents made said payments.

25. For said $4,000 face balance and interest a claim was made in this Court against Debtor estate. That claim No. 8 by Indemnity Insurance Company of North America has been denied and disallowed by this Court. The opinion and findings of this Court in that matter as filed July 13, 1938

is incorporated as part hereof. The Superior Court was not informed about the damage claims and proceedings on the Wenstrand and appeal bonds. Until in this present litigation original documents were produced from the files at the home office of Indemnity Insurance Company of North America, it was not known (to any Court or Granada creditors) that officials of Cody Trust Company and Wenstrand had agreed to purchase the receiver's certificate if it was not paid off out of Granada funds; nor was it known (to any Court or to Granada creditors) that Wenstrand and others are indemnitors upon all the Wenstrand bonds in this Court. The Superior Court Judge was not told that Wenstrand and others had signed the 1928 refinancing first mortgage bonds as makers thereof; that Court was not informed that by said payments of Granada money, all Pick claims against said third parties upon injunction and appeal bonds, were settled, cancelled and released by Pick Successor.

26. When we look at the whole evidence as equity looks at evidence, we reach the same results. Respondents and I. I. C. N. A. with knowledge, participated in a conspiracy the effect of which was to use the bondholders money a second time to purchase furniture and personal property for the Granada Hotel. The details of this conspiracy appear from beginning to end of the record. A repetition at this time is deemed unnecessary. But the outstanding facts are that Wenstrand had signed the first mortgage bonds; that Wenstrand, Riddle and Cody by secret agreement in writing off the Court records were indemnitors to I. I. C. N. A.; that I. I. C. N. A. had been told that the Wenstrand suit was in reality for Cody Trust Company; that Cody Trust Company had agreed to remove the Pick chattel lien as between Cody Trust Company and Chicago Trust Company; that Codys and the Chicago Trust Company both had represented to the bondholders and the public through the mails in 1924 that furniture and personal property at Granada was part of the security; and that Cody Trust Company and Chicago Trust Company had made the same representation again in 1928 in relation to the refinancing; and effective soon thereafter these facts were well known to the Central Republic Trust Company and City National Bank & Trust Company, and were available to or known by Chicago Title & Trust Company and by I. I. C. N. A. and its attorneys. By their efforts the bondholders money paid a second time for furniture at Granada.

27. Until January 12, 1934, Chicago Title & Trust Company was only a custodian of net rents paid to it, a mere bookkeeper. The order that day (four months after the receivership certificate was issued) for first time directed it to take possession of the property. Before that it was forbidden by court order to do so.

28. The last interest paid to any bondholders was to pay first mortgage coupons for 1931. The money misappropriated to buy furniture a second time and to pay to I. I. C. N. A. and sundry litigation in many courts stopped completely all payment to the bondholders. Creditors 413 were hindered, delayed and defrauded. None has been paid since. Chicago Title and Trust Company as nominal receiver was a party to some of this diversion of trust funds, from creditors who were not informed. Respondents and the other signers, by stipulations assisted in this breach of trust, knowing that there would not remain money to pay the bondholders.

29. All the litigation prior to August, 1933 had affected only the second mortgage trust deed. In that month the cross bill to foreclose the first trust deed was filed; and immediately this receivership certificate was asked for. Plainly the cross bill was filed for that purpose. Decree of foreclosure was not entered until December 18, 1936, which was more than forty months later.

30. The decree dated December 18, 1936 and orders of 1933 and later in said case 519151 for foreclosure in Superior Court are all void for want of good faith. Granada Hotel Corporation (predecessors of the debtor) was dissolved by the Superior Court of Cook County, Illinois, in cause Numbered 50985, upon due complaint by the attorney general of Illinois; and decree entered for dissolution May 17, 1930. All parties knew it was defunct more than two (2) years when for the first time in August, 1933 proceedings to foreclose first trust deed and to issue receiver's certificate were attempted by cross bill. All proceedings and the decree in Superior Court claim only a debt due from said defunct corporation and no one else. The supposed chattel mortgage lien was a mere shield and secured no actual independent debt. The Superior Court Proceedings are void also for nondisclosure and for want of a true trustee party plaintiff. By the decree December 18, 1936 the presiding Judge of the Superior Court refused to allow or consider any accounting of the funds.

31. Respondents and I. I. C. N. A. stress the contention that attorney Shanner did not participate in the proceed-

ing in the Superior Court. This does not help I. I. C. N. A. nor respondents. Some attorney for I. I. C. N. A. did participate in the Superior Court proceedings with attorneys for respondents, by signing numerous stipulations there; whereby it was charged with knowledge of what could be ascertained by inquiry. If it were true that Shanner was concerned only with the damage claims in the Wenstrand suit in this Court, such fact is an admission that the main and controlling purpose of I. I. C. N. A. in advancing the Eleven Thousand Five Hundred Dollars ($11,500) was to save itself from liability in said damage suit and secure release of same. This was accomplished by a stipulation for dismissal filed in this Court signed not only by Albert Pick & Company, but also by respondent and International & Industrial Securities Corporation, to whom this Granada money was paid.

32. Nominees of Cody Trust Company physically and actually operated the property until January, 1934. The Cody Trust Company went into receivership about December, 1933, whereupon on January 12, 1934 an order was obtained from Superior Court directing the Chicago Title and Trust Company to disregard the order of June, 1930, and to take possession and control of the property. Under this order Chicago Title & Trust Company did purport to operate the property for two months. But in March, 1934 this short receivership was ended by an order entered on a stipulation of certain parties interested in the foreclosure in the Superior Court, and the Receiver was
414 directed to turn over the hotel property and certain funds and securities to Central Republic Trust Company as Successor Trustee in possession under the first lien trust deed made in 1928. At that time school tax warrants owned by Granada needlessly were sold at a discount. The order allowed Chicago Title and Trust Company Three Thousand Dollars ($3,000) for services.

33. At that time and until the Central Republic Trust Company went into receivership near the end of 1934, the City National Bank and Trust Company furnished the personnel and service on the trusts including the Granada matter, as to which the Central Republic Trust Company was nominal Trustee. From October, 1932 the City National assumed and exercised real control over Granada affairs. When the Central Republic Trust Company went into receivership an order was secured in the foreclosure proceeding in the Superior Court; purporting to have the Central Republic Trust Company and its Receiver resign as suc-

cessor trustee under the 1928 Granada Trust Deed, and on Motion of Granada Bondholders Committee to appoint City National Bank and Trust Company as an appointed successor trustee under the trust deed. The Bondholders Committee filed a petition requesting that action by the Court. Under the Illinois law at that time, no such question of title could be brought before the Court in a foreclosure proceeding. These acts were void.

34. This Bondholders Committee had no will of its own. It had been organized in April, 1933 by and among minor officers, employees and nominees of City National Bank and Trust Company. From that time until the Court Trustee in these proceedings took possession under the order of May 17, 1937, City National Bank and Trust Company, claiming to be trustee in possession operated the Granada Hotel property. City National installed intricate bookkeeping under which Granada moneys were shifted from one fund to another. City National and its alter ego, Granada Bondholders Committee entered into possession and engaged in various dilatory litigation, in Superior Court, County Court, this Court and Courts of Review (269 Ill. App. 484), (297 U. S. 225).

35. From 1929 when the new corporation was formed, until May 17, 1937 the actual operation and control of the Granada Hotel property was carried on by some representative of the Cody Trust Company or the Chicago Trust Company or the Central Republic Trust Company or the City National Bank and Trust Company. Since 1931 Edward Hall was this representative and was on the payroll when this Court took possession of the property in May, 1937. It is admitted by the pleadings and in evidence here that Mr. Hall was so retained to represent and to keep informed the Cody Trust Company and their successors in interest. When the Court took possession of the property, claims were filed upon Granada bonds of the 1928 issue of second mortgage, by various Chicago Banks who held them as collateral for loans to Chicago Trust Company and Cody Trust Company.

36. All these facts were known or available to City National. The records show that the attorneys whom they now retain, have been active in all of these matters since 1924, and have had to do with most of these litigations. It does not appear that City National or anyone tried at any time to have the Codys or the Cody Trust Company or its officials, or the Chicago Trust Company, or its officials, or

any successors or receivers for them, or Wenstrand
415 and the other indemnitors on the court bonds that were released by buying the Pick furniture the second time with bondholders' money, and buying new furniture from La Salle Furniture and Supply Company when Pick & Company took away part of the furniture, to have any of these persons perform their promises and duty to the Granada property and the Granada bondholders.

37. All these litigations for ten years were conducted and financed with Granada money, and each of them successively was a new step to try to stop execution of the judgment and decree secured in 1928 by Pick under chattel mortgage. This judgment was for money which the bankers (who initiated the bond issue and sold the bonds) had owed since 1924. The whole ten years of litigation grew out of the fact that Chicago Trust Company and the Codys and their attorneys failed in their promise to the bondholders in 1924 and 1928 to remove all debt and to tie in the furniture and equipment of the Granada Hotel as part of the security which the bondholders purchased. The property and the bondholders have received the punishment. It has taken an extensive hearing before this Court to assemble far flung documents and court records and to present this long trend of evasions, but when assembled the plan of these various trust companies and these attorneys to throw the loss either on Pick or the bondholders, rather than where it rightfully belonged is very plain. By intricate legal devices, complicated financial bookkeeping, stipulations, petitions and court orders, it finally came about that the bondholders' money has been used the second time to replace some furniture which Pick took away, and purchase some fixtures from its successor. In the face of the assembled evidence, reduced here to record, City National Bank and Trust Company claiming to be trustee, and its counsel, still stoutly maintain they have no responsibility, and that their course of action is correct in having furthered this enterprise which has continued for ten years to harass and distress this property and the people who furnished the money to build it.

38. At date of its charter October 5, 1932, City National took over from Central Republic Bank and Trust Company and now continues as part of its trust department a personnel organized and called the Corporate Reorganization Division. That personnel is a "new-business" promotion device. It is a commercial machine to secure new trusts for the trust department at City National. The

evidence shows that through this device the City National has obtained some 425 corporate reorganizations for its trust department. The City National pays the personnel of the Corporate Reorganization Division, expecting to be reimbursed eventually out of such trusts as are obtained, and from which collections for trust services can be made. When information is received that a default has occurred in a corporate issue, the method of operation is for City National to organize a bondholders committee. The names are chosen from among employees of Corporate Reorganization Division or other employees nominees or officers of City National.

39. This method was pursued with relation to Arlington Apartment Hotel property and Lincoln Park Manor Hotel property. The Arlington has been reorganized through a foreclosure in the Circuit Court. Arlington, Inc., is a new corporation set up for that property. The Lincoln Park Manor is still in process in that Court. For it there is a similar City National Bondholders Committee. City National was trustee for both Arlington and Lincoln Park Manor.

416

40. In the case of Granada, Cody Trust Company had the bondholders list for the junior mortgage issue, and Three Hundred Twenty-five Thousand Dollars ($325,000) of the first mortgage issue. The committee when formed by City National included representation from Cody Trust Company. Two secretaries were appointed for the committee, one with relation to the bondholders list which City National had from the Chicago Trust Company files; and the other to correspond with persons on the list from the Cody Trust Company files. The committee has been at all times dominated and controlled by City National. It existed solely as a service unit in City National trust department. The minutes produced in this Court to show what action was taken by the Granada Committee, do not show that any constructive action was ever taken looking toward a reorganization of the Granada property. The only matter recorded prior to discussion of the present proceedings in this Court was refusal to accept an offer of twenty cents per dollar face value for the bonds on deposit with the Committee and City National as its depositary.

41. In the minds of City National witnesses there was no distinction between the Committee and the Reorganization Division of the City National, and their witnesses could not distinguish the expenditures by the Committee

from expenditures by the City National as Trustee. The same personnel would pass upon any matter that came up either to the Committee or the Trust Department. The same individuals who used their personal names to persuade the public to deposit bonds, were the persons who handled the business for City National after it had become depositary, or fiduciary in some other capacity. The trust relationship was treated as a business to be obtained and conducted like any other commercial operation obtained by ingenious form of advertising. Although committees for Lincoln Park Manor, Arlington and Granada were dominated by the Trust department of City National, and were interlocking (the two top individuals in the Corporate Reorganization Division being members of all three committees) no serious effort has ever been made to reorganize said properties as a business unit. Rather the effort has been to prevent a unit reorganization of the three properties. Divide the bondholders, increase the expenditures, increase the difficulties of reorganizations, has been the method pursued with reference to these three properties, which from the engineering standpoint and their manner of construction were intended to be operated as a single unit.

42. If the properties were not to be operated as a single unit but as antagonistic units, it was highly improper for the committee or City National or counsel to continue to represent more than one of them. A continuance of said representation at all times was a breach of trust which alone disentitles counsel or committee or City National to any compensation for services to Granada. Instead of reorganizing three properties as a unit or resigning from two of the trusts, City National officials at the beginning of 1934 consummated a course of action which had been planned for a year, by charging off a balance of Four Thousand Eighty Dollars ($4,080) that had been regularly billed to Arlington and placed upon the Granada books of account, for the heat, hot and cold water and refrigeration services furnished by Granada during the year 1933. The charge (of which said sum is the unpaid balance) was made pursuant to the Barton contract.

417 43. The purpose and effect of this attempted reduction was to enable the Arlington between 1933 and the present time to pay off entirely its taxes, and to leave the Granada with a tax bill about Sixty Thousand Dollars ($60,000) when these proceedings were begun. At the same

time this was done, the former rate of compensation paid by Lincoln Park Manor to Granada was continued and collected without change by respondents and City National as its trustee; and is being paid today by a lessee of that hotel. This deliberate purpose to favor the Arlington, as against Granada by the reduction in charge forcibly made, is an additional breach of trust wholly without any warrant or reason and an intentional derogation from prior operation under the Barton contract with Granada as modified in 1930. That contract remains in force at this time. After trial of this suit, Arlington, Inc. has refused to receive services under said contract since December 10, 1937; Arlington, Inc. is officered and controlled by City National employees, who have done this additional wrong to Granada.

44. Since the Granada property was built in 1924, one set of attorneys have prepared the financial papers and have represented Chicago Trust Company, Cody Trust Company, Thuma, Wenstrand and Hall as agents and nominees for said companies, and also for Central Republic Trust Company and the Bondholders Committee for Granada property. Throughout ten years of litigation a connected purpose is shown to prevent a clearance of this property from Court entanglements. As each suit came to adverse determination, a new one was begun in the name of some new Trust Company or some new nominee, whose name was used in some new suit or some new Court to delay, embarrass and harass creditors of the estate. Every effort has been made to pay with moneys from the Debtor estate, court expenses and legal expenses for maintaining and continuing these various litigations, and to protect the bankers who initiated bond issue and sold the bonds and attorneys from their own wrongs and mistakes.

45. None of the law suits have accomplished any appreciable good for the debtor estate; none of them has added to or increased the assets which came into the care of this Court. On the contrary said parties have accomplished delay and obstruction to the prompt clearance of business affairs of debtor estate. They have produced great uncertainty, tax delinquency, discredit, waste, damage, loss, have prevented prompt or proper action by the State Courts and this Court, and have delayed, obstructed and harassed the Court Trustee of this Court in making either a normal or prompt disposition in this Court of the affairs of Debtor Estate. By law of Illinois all said transactions

are null and void. There was no bona fide purchasers for a present fair equitable value at any of these situations. In none of them was a fair consideration given to debtor estate for its money. All these acts were done with knowledge that debtor was insolvent. After 1929 the property was a bondholder's equity; because the bankers concealed and repudiated their own contract and refused to perform their duty to the property and to the bondholders.

46. City National (self-appointed by its own committee) claimed to be trustee under the 1928 first mortgage trust deed, but it dealt with Debtor property as though it were the general owner of all Granada affairs. The fullest control was taken over all manner of personal property including notes and other securities representing general moneys due to the Debtor Estate. In practice City National made itself general trustee far beyond any sup-
418 posed authority under the order of Superior Court.

When City National, or the Committee, or the counsel, decided to take an action they did so as would an owner of the property, or they got stipulations and a Court order; but if the matter were something that City National did not want to do they took the stand that they were trustee in possession and free from Court Control. In the Harris *vs.* Tuttle litigation (which was a prior reorganization case) in this Court, the Circuit Court of Appeals, and the United States Supreme Court (297 U. S. 225), they successfully maintained that position. To pay themselves for doing so they appropriated about $4,000 of Granada money. In present reorganization case, City National and said attorneys filed in writing objection and motion to dismiss on May 17, 1937 in an effort to thwart and stay all action by this court.

47. The cleverness with which this long train of affairs has been carried on for ten years, now in Court and now out of Court, to the utter defeat of all opposition by creditors or bondholders, shows how helpless the investor became; and the need for relief. For the purpose of carrying on litigation, when City National or the Committee or counsel decided to do so, they had abundance of money and unlimited power to act; but if it be something they do not wish to do, they take the opposite position that they are limited; could not replace the incinerator; could not make slight changes in the rentable space on the first floor of the hotel; and could not do many other things which are mentioned in the record. There is no consistency at all

in the shifting positions taken by the City National, the Bondholders Committee and their counsel in this record. They step into power and out of power, as for the moment suits their pleasure; they claim or disclaim as they think is expedient at the time.

48. City National Exhibit "X" prepared early in 1924 provided an estimated basis of compensation between Granada Hotel and Arlington Hotel. This document was prepared by Defrees, Buckingham, Jones, and Hoffman, attorneys. They are in this Court in this accounting litigation, representing City National, the Granada bondholders Committee and a separate accounting suit against Arlington Inc. The evidence shows these attorneys at one time or another represented all persons and trust companies having to do with Granada finances, except perhaps Mr. Mateer. They filed the Thuma partial foreclosure on the Granada property in 1930, which was allowed to lag along until Cody Trust Company became insolvent and the Granada Committee was launched by the City National. At that time these attorneys withdrew as counsel for Thuma and immediately appeared on the opposite side of the record as counsel for Chicago Trust Company, then for the Bondholders Committee, and then for City National. These attorneys have represented throughout, the Bondholders Committee for the Granada, the Arlington and the Lincoln Park Manor properties, and likewise the City National as Trustee for these properties.

49. Neither the attorneys nor the Bondholders Committee, nor the City National presented any plan at any time to the bondholders or anyone else for the joint operation or unit reorganization of the three properties. Absent a joint operation or a unit reorganization, there was an adverse financial interest between Granada and each of the other properties, because of the services rendered by the Granada property to the other hotels. Neither the attorneys, nor the committees which have an interlocking personnel, nor the City National as Trustee, could rightfully continue a common relationship to all these properties once this adverse interest was disclosed. It is
419 plain this adverse interest existed from the time Mr. Mateer ceased to own the stock of these three properties, and ceased to manage them as a unit enterprise. Control was taken from him in May 1929, when Granada Apartments Inc., was organized. From that time until now these properties were bondholders equities. No per-

son in a confidential relationship to one of these properties could rightfully represent another.

50. The record does not disclose that any information ever was given to the bondholders or creditors of Granada, about the receiver's certificate, or any moneys used in furniture litigation; or that the City National as Trustee and the Bondholders Committee and the Attorneys, occupy similar relationships to the Arlington property, and to Lincoln Park Manor property; nor does it appear that any bondholder or creditor knew that the Granada Bondholders' Committee was merely a business getting device for City National without a will of its own; nor does the record show that any bondholder or creditor of Granada knew that City National and the Bondholders' Committee were employing said attorneys who had formerly represented adverse interests and currently were represented adverse interest. Continuously since the Committee was organized in 1933 these adverse situations of interests have existed and were fully known to the Committee, to the City National and to said counsel, all of whom have committed breaches of trust in failure to make full disclosure and failure to resign from all but one of said relationships. The breach of confidence thus in evidence is so fundamental as to destroy all right for any of these parties to have compensation or reimbursement for any services.

51. By the foregoing and other acts of force, fraud and secrecy shown by evidence in this record, control was obtained and determinedly held over debtor property for the purpose and with the effect to hinder, defraud and delay creditors of the debtor. Respondents brought about that result. After 1931 no interest was paid to first or second mortgage bondholders: the tax bill unpaid rose from about $30,000 in 1931 to about Sixty Thousand Dollars ($60,000) in May 1937.

52. For any matter or action wherein City National, its Committee or Counsel claim they were hindered by need for consent of Debtor Corporations or other persons, they are at fault by failure to make full disclosure, to demand consent, and obtain consent or refusal, and likewise by failure in this record to prove the same.

53. The reasonable value of the heat, hot and cold water and refrigeration service which have been rendered to the Arlington hotel property by Granada until there was wilful cut off of pipes by respondents and refusal further to re-

ceive the services after December 10, 1937, is found to be at the rate of One Thousand Dollars ($1,000) per month.

54. Without need for repetition here in detail, the truth of all matters stated in answer and counterclaim by Court Trustee filed September 9, 1937, is fully established by evidence in the record. The Court Trustee has fully proven the substance of all matters claimed in his pleadings and herein enumerated, and Debtor estate is entitled to full relief for the wrongs asserted and proven of record. All the items claimed as credits by City National should be falsified, disallowed and ordered paid to Court Trustee with reasonable interest.

55. The evidence shows that the following items are due from City National Bank and Trust Company to Debtor Estate and the Court Trustee, together with interest at five per centum on each item from the date of its accrual and that the accounting by City National should be surcharged therewith:

420 1. All costs of this proceeding including trial counsel fees for Court Trustee and cost of special Auditing and Engineering services, expense for exhibits and witness fees, and extra services of the Court Trustee caused to the Debtor Estate, in such sums as the Court may determine upon hearing as to same.

2. Restoration of incinerator (waste and neglect) August 1937 ..... $ 500.00

3. City National without making a substantial adverse claim, refused to pay over cash funds pursuant to Court order and demand made by the Court Trustee May 1937..... $ 1,990.86

4. Without authority City National consented to and made wrongful payment from rentals upon receiver's certificate ..... $ 7,500.00
And also cause payments to Pick successor August 1933 ..... $13,000.00

5. City National charged for management fees as trustee in possession; never earned, before May 1937 ..... $11,365.42

6. Without authority City National paid court costs, fees and legal expenses never earned, February 1936 ..... $10,186.65

7. City National paid valet commissions to Arlington, earned by Granada rental space, before April 1937 ..... $ 250.00

8. City National without authority wilfully reduced and failed to collect or pay over rentals due from Arlington for inter-hotel services from January 1, 1933..... $19,170.00

9. City National neglected and failed to seek tenants for ballroom, solarium, writing room and director's room, all space adjacent to lobby $10,968.00

10. Needless tax penalties (admitted by City National petition) resulting from failure to apply funds to taxes, before May 1937..... $ 5,000.00

56. The evidence shows and the Court finds that City National was not lawful trustee for Granada; but if it were, then for its services as trustee it should receive not exceeding five hundred dollars, and should receive nothing for out-of-pocket expenses. Likewise the bondholders committee has not justified its claim for out-of-pocket expenses, and if it were entitled to receive any pay for services in these proceedings or for any previous services about Granada matters, the maximum thereof would not exceed $1,000 for its fees; $1,150 as maximum allowance for depositary fees; and a maximum of $2,285.21 for out-of-pocket expenses; likewise the attorneys and counsel for City National and its Bondohlders Committee, if they were entitled to receive any compensation for services in these proceedings or for any previous services about Granada matters, the maximum thereof would not exceed $4,500, in addition to cash payments made to them. The demands of respondents all are unreasonable and inequitable. Any award that should be made by reason of their services, could be credited only to account of City National.

57. The Court does not intend to minimize, but does recognize the many wrongs and injustices to the debtor estate shown by this record, which have been committed by City National, by the Bondholders Committee and by their attorneys and counsel; the Court finds that all equities are with the Court Trustee; but the Court believes that justice to all concerned will be rendered more speedily if the opposing claims and contentions are set off against each other and said named parties to this accounting (court trustee, City National, committee, and attorneys) are left

as they now are, each to pay its own costs and charges, and no cash recovery to be allowed or made by these findings and decree.

421 58. The Court finds that the Claim No. 9 and all petitions by City National Bank and by the Bondholders Committee and its counsel for allowances shall all be denied, disallowed, and dismissed for want of equity; and that the Court Trustee shall recover against City National, the Bondholders Committee, or its counsel only by way of recoupment.

IV. Conclusions of Law.

The Court records that the following Conclusions of Law are applicable to this case:

59. The question here is not whether duress in the legal sense was exercised by the City National, Committee and counsel, or either of them, but the question is whether under all the facts and circumstances of this case an unfair advantage was obtained by them; or either of them, through the exercise by them of superior or undue influence over the Debtor, made possible by reason of the necessities and distress of the Debtor and nominal stockholders. Respondents undertook to perform a fiduciary relation. Such undue influence of this character is remediable in equity in this case.

60. The Respondents having induced through the exercise of undue influence ovey the Debtor, the Superior Court order for City National to be Trustee and the arrangement provided thereunder, and thereby having obtained control and management of the Debtor's property and assets, are bound to account: and are charged as Trustees do son tort for all the losses suffered by Debtor by reason of such management and control, and are liable to deliver to the Trustee appointed by this Court, such property assets and business including good-will, in the same condition they would have become under prudent owner management, if it had been exercised ever since when respondents obtained control and dominated the mnagement.

61. By reason of the circumstances under which City National assumed to be trustee, the control and management of the Debtor was placed in their hands to the exclusion of the exercise of the functions and powers of the constituted officers and directors of the Debtor.

62. Respondents having obtained control of Debtor's

property and assets under said arrangement, assumed the duty to decide whether they would operate the business or close it down. If they determined to operate it, they were bound to so operate or carry on the business in a manner that would not deplete its assets, misuse property. nor commit waste.

63. However or in whatever manner respondents obtained control of the management of the Debtor's property, business and affairs, they are bound to account and answer as fiduciaries for any and all losses to business, good-will, depletion of assets or property which resulted during the period from January 1, 1933 to May 17, 1937, due to mis-management or negligent, willful, reckless or imprudent acts.

64. This record proving that the assets, property and business of the Debtor were depleted during the period of respondents control and management, and losses were sustained to a certain amount as shown by the records of the operation of said business, there arises a presumption of liability upon respondents for such losses in evidence before this Court; and the burden then rests upon respondents to show by preponderance of the evidence that such losses resulted or took place by reason of circumstances beyond their control. This they have failed to do.

422 65. Respondents and each of them, are liable to the Trustee in Bankruptcy for the costs and expenses of this accounting; including reasonable fees to counsel for the Trustee and Debtor in addition to their liability at account for other matters.

66. Every fiduciary must act for the benefit of all parties in interest. The question of good faith of a trustee is always before the Court. Courts will correct all acts of a fiduciary and all associates which are not for the best interests of the Estate. All acts of a Trustee and its associates which are in derogation of the trust power and duty, are ultra vires and void in this court of equity. All persons have duty to observe such limitation of fiduciary power.

67. Legality is not equity, nor a defense. To use the forms of law to cloak fraud or misuse of funds or property, only increases the wrong done. Lawsuits as protective cover for fraud are as improper as transfers. Administrative or Court approval to an act, without adequate disclosure and fair dealing to absent beneficiaries who have no independent representation, will be treated

as void. All parties who participate will be compelled to make the estate whole by full restoration.

68. Anyone who intermeddles with an estate or who assists anyone else in doing so, thereby becomes obligated to replace all funds or property lost or otherwise misappropriated, even though one or more of said parties be mortgagee or trustee in possession.

The tenure of an Indenture Trustee in possession lasts only until the debt is paid; hence, the strictness of its duty to apply all funds to that purpose; it cannot speculate with personal property of any kind.

69. The failure of counsel, to advise and the City National to pay over and deliver moneys, documents and property on hand May 17, 1937, upon the demand made by the Court Trustee, is not only a contempt of the order of the Court entered that day, but is a direct violation of section 268 of the National Judicial Code, and subject to the penalties therein provided.

70. The Court Trustee should recover on counterclaim. In such cases as we have at bar Equity awards interest costs to the Estate, and against respondents.

71. The judge deems that application of chapters II and X of Amendment to Bankruptcy Law Approved by the president June 22, 1938, to this litigation is pracical and desirable, the decree herein shall so provide.

72. The foregoing findings by the Court are made, approved and filed of record this second day of May, 1939.

Barnes,
Judge United States District Court.

To the making of which said findings of fact and propositions of law, and to the failure of the court to make those findings of fact and propositions of law as were submitted and filed by the Committee and City National Bank & Trust Company, as Trustee, the Committee and City National Bank and Trust Company, as Trustee, objects and excepts.

Entered May 2, 1939.

423 And afterwards, to wit, on the 2nd day of May, A. D. 1939, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit: Decree.

424 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—65811) * *

DECREE.

At Chicago, Illinois this second day of May 1939 before said Court, Hon. John Peter Barnes, Judge presiding:

This cause again came to be heard at May term, upon Paragraphs 5 and thereafter of Claim No. 9 filed June 23, 1937 by City National Bank and Trust Company of Chicago as amended; and upon objections and more specific objections thereto in writing filed by Weightstill Woods as Trustee in Bankruptcy herein, and upon petition to settle accounts filed August 30, 1937 by said City National; and upon the answer and counterclaim by Court Trustee filed September 9, 1937, and reply by City National Bank and Trust Company to said counterclaim, and upon the evidence offered and received in open Court on behalf of said Trustee in Bankruptcy; and upon the evidence offered and received in open court on behalf of said City National, Bondholders Committee and their counsel; and upon the report of referee as to evidence taken upon petitions for fees and allowances; and upon the briefs, and suggestions made by the parties, and upon arguments of counsel before the Judge in open court for the respective parties; and upon the orders of this Court consolidating all said matters for disposition; and the Court having made and filed with the Clerk of this Court the written opinion of the Court, and also findings of fact and conclusions of law by the Court, upon the evidence
425 and issues involved; and the Court being fully advised in the premises:

It Is Ordered And Decreed As Follows:

(1) That said paragraphs 5 and thereafter of Claim No. 9 by said City National against the Debtor, be wholly disallowed and dismissed for want of equity;

(2) That all petitions and claims for expenses and al-

lowances by said City National, Bondholders Committee, and their attorneys and counsel, be now wholly disallowed and dismissed for want of equity.

(3) That the petition by said City National filed August 30, 1937 be allowed only so far that said City National be now discharged from making any further accounting as to the matters mentioned in this proceeding;

(4) That for all other purposes said petition by City National be dismissed for want of equity;

(5) That said answer and counterclaim by Weightstill Woods, Court Trustee, filed September 9, 1937, be sustained and allowed in favor of Court Trustee in this cause, that said recovery be effective as a recoupment to extinguish any and all claims at this date by said City National, Bondholders Committee and their counsel of record without prejudice, however, to the right and power of the court to make disposition of the petition of the Committee relating to title charges now pending before Referee Chindblom.

(6) The Court Trustee does not recover herein additional sums of money against City National, the Bondholders Committee, or its counsel;

(7) The judge deems that it is practicable and desirable, and the Court decrees that application of Chapters II and X of Bankruptcy Law as amended by act of Congress approved by the President June 22, 1938
426 shall be made to this litigation. Such application is hereby made for the promotion of justice.

Enter: May 2 1939.

Barnes,
Judge United States District Court.

Exceptions allowed to City National Bank and Trust Company and to Bondholders Committee and their counsel. Exceptions allowed to Court Trustee with reference to Paragraph 57 and 58 of findings of fact, and to paragraphs 3 and 6 of this decree.

Barnes.

439 And on, to wit, the 1st day of June, 1939, came the City Natl. Bank & Trust Co. of Chicago, etc., et al., by their attorneys and filed in the Clerk's office of said Court their certain Notice of Appeal in words and figures following, to wit:

Filed June 1, 1939.

440 IN THE DISTRICT COURT OF THE UNITED STATES,
For the Northern District of Illinois,
Eastern Division.

In the Matter of
Granada Apartments, Inc., a corporation,
Debtor.

City National Bank and Trust Company of Chicago, individually and as Successor Trustee, et al.,
Appellants,
vs.
Weightstill Woods, Court Trustee, Granada Apartments, Inc., a corporation, Granada Apartments Hotel Corporation, a corporation, Florence Newman, Edwin Rosenberg, Charles Cunningham, as Receiver, Maurice M. Kraft, Stephen L. Ingersoll, as Agent for Cordelia L. Ingersoll, as Executrix of the Estate of Stephen A. Ingersoll, Deceased, Edla Christiansen, Emil W. Christiansen, G. R. Curnock, Reconstruction Finance Corporation, a corporation, Indemnity Insurance Company of North America, a corporation, E. W. Wenstrand, Continental Illinois National Bank and Trust Company of Chicago, a corporation, Charles H. Albers, as Receiver, Harris Trust and Savings Bank, a corporation, I. Gordon, J. Rose, Sam Harris, M. Bernard Greenberg,
Appellees.

In Proceedings for the Reorganization of a Corporation.
No. 65811.

NOTICE OF APPEAL.

441 Notice Is Hereby Given that City National Bank and Trust Company of Chicago, individually and as Successor Trustee under indenture securing Granada

Apartments First Mortgage Bonds, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933, with respect to said Bonds, and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman, hereby appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the following portions of the order entered in the above entitled cause on May 2, 1939, which ordered and decreed in part as follows:

A. That paragraphs 5 and thereafter of Claim No. 9 by City National against the Debtor be wholly disallowed and dismissed for want of equity.

B. That all petitions and claims for expenses and allowances by City National, Bondholders Committee and their attorneys and counsel be now wholly disallowed and dismissed for want of equity.

C. That the petition by City National filed August 30, 1937 be allowed only so far that City National be now discharged from making any further accounting as to the matters mentioned in this proceeding.

D. That for all other purposes petition by City National be dismissed for want of equity.

E. That answer and counterclaim by Weightstill Woods, Court Trustee, filed September 9, 1937 be sustained and allowed in favor of Court Trustee in this 442 cause, that said recovery be effective as a recoupment to extinguish any and all claims at this date by City National, Bondholders Committee and their counsel, without prejudice, however, to the right and power of the court to make disposition of the petition of the Committee relating to title charges now pending before Referee Chindblom.

and to that portion of said order which ordered and decreed in part as follows:

F. The Judge deems that it is practicable and desirable and the Court decrees that application of Chapter II and Chapter X of the Bankruptcy Law, as amended by Act of Congress approved by the President June 22, 1938, shall be made to this litigation. Such application is hereby made for the promotion of justice.

in so far as said portion of said order and decree pur-

ports to make Chapter II and Chapter X applicable generally to said proceedings.

Dated this 1st day of June, 1939.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
Attorneys for City National Bank and Trust Company of Chicago, individually and as Successor Trustee under indenture securing Granada Apartments First Mortgage Bonds; Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933, with respect to said Bonds; and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
105 South La Salle Street,
Chicago, Illinois,
Attorneys for Appellants.

447 And on, to wit, the 14th day of June, 1939, came the City Natl. Bank & Trust Co. of Chicago, et al., by their attorneys and filed in the Clerk's office of said Court their certain Statement of Points in words and figures following, to wit:

448 IN THE DISTRICT COURT OF THE UNITED STATES. Filed June 14, 1939.
* * (Caption—65811) * *

STATEMENT OF POINTS.

Appellants contend that the designation of record accompanying this statement of points relates to and includes, within the meaning of Rule 75 (d) of the Rules of Civil Procedure for the District Courts of the United States, the complete record in respect of the hearings and proceedings which resulted in the decree from which Appellants appeal.

Since said Rules are of recent enactment and since there have been as yet no interpretations of Rule 75 (d), Appellants are unwilling to rely upon their interpretation and therefore they specify the following points on which

449 Appellants intend to rely on the appeal heretofore taken by them to the Circuit Court of Appeals in and for the Seventh Circuit, reserving, however, the right to contend that no such statement of points is required:

1. The Court erred in making its finding of fact numbered 2 to the extent that it finds as a matter of law that the Federal Trustee is acting "under Chapters II and X of amended law."

2. There is no evidence of record to sustain that part of finding of fact numbered 4 which reads "to defend and is now carrying on this litigation, by order of the Court," and it is contrary to the evidence of record.

3. The Court erred in making its finding of fact numbered 10 to the extent that it finds Chapters II and X of the bankruptcy amendments applicable to this litigation.

4. The Court erred in making its fact finding numbered 12 to the extent that it finds that Mateer owned the corporate stock.

5. There is no evidence of record to sustain that part of finding of fact numbered 14 which reads:

"There was a failure by Chicago Trust Company and its counsel to see to it that the furniture and fixtures in the Granada Hotel were paid for out of the proceeds of that loan."

6. There is no evidence of record to sustain that part of finding of fact numbered 14 which reads:

"They charge Granada Hotel Corporation more than

One Hundred Twenty Thousand Dollars ($120,000)."

450 7. There is no evidence of record to sustain finding of fact numbered 15.

8. There is no evidence of record to sustain that part of fact numbered 16 which reads:

"The increase over 1924 was about Three Hundred Thousand Dollars ($300,000)."

9. There is no evidence of record to sustain that part of finding of fact numbered 16 which reads:

"Again there was a failure to pay off the claim of Albert Pick & Company, out of the proceeds of the new financing."

10. That part of finding of fact numbered 17 which reads:

"In the Wenstrand suit in this Court bonds were given of $5,000, $20,000 and finally $40,000 to stay the sale."

is contrary to the evidence.

11. There is no evidence of record to sustain that part of the finding of fact numbered 19 which reads:

"To protect those who initiated the bond issue and sold the bonds, another employee or nominee of Cody Trust named Thuma, was now used to file on June 10, 1930 a suit for partial foreclosure in the Superior Court of Cook County upon a claim of default upon certain interest coupons of the 1928 second mortgage Granada issue."

and it is contrary to the evidence of record.

12. There is no evidence of record to sustain that part of finding of fact numbered 20 which reads:

"as part of this action by direction of those who initiated the bond issue and sold the bonds, a conditional sales contract was issued to La Salle Furniture and Supply Company for Thirty-five Thousand Dollars ($35,000)."

13. There is no evidence of record to sustain that
451 part of finding of fact numbered 20 which reads:

"It was a corporation organized by Cody Trust Officers and their counsel for this one transaction. The Bankers thus made their own collateral."

14. There is no evidence of record to sustain the first sentence of finding of fact numbered 22.

15. There is no evidence of record to sustain that part of finding of fact numbered 23 which reads:

"Mr. Mateer definitely passed out of the enterprise. This corporation never had an independent will of its own. An agreement was made between Chicago Trust

Company and the Cody Trust Company, whereby the latter (as between them) had the duty to see that the Pick claim was disposed of out of the proceeds of refinancing of 1928."

16. There is no evidence of record to sustain that part of finding of fact numbered 23 which reads:
"an agreement was negotiated by Edward Hall, another employee and nominee of the Cody Trust Company and City National, who was then in charge at Granada, cooperating with their attorneys."

17. There is no evidence of record to sustain that part of finding of fact numbered 23 which reads:
"thereby the right established in Superior Court to remove said fixtures from the hotel was sold to the Central Republic Trust Company, as successor Trustee under the 1928 refinancing trust deed."

18. That part of fact finding numbered 23 reading "To carry out this agreement" is contrary to the evidence.

19. The Court erred in making that part of finding of fact numbered 24 which reads:

452 "A stipulation was signed by attorneys and some parties in the Superior Court case, and upon that an order was entered directing the Chicago Title and Trust Company to issue a Receiver's Certificate to obtain money."
and in not finding that the order was entered not only upon the stipulation but upon a petition duly filed.

20. The Court erred in finding of fact numbered 24 which reads:
"Services of said attorneys were performed to protect persons other than the bondholders."
and in not finding that the services were rendered in fixture litigation in the Superior Court, the Appellate Court and the Supreme Court of Illinois for the purpose of keeping in the building the alleged fixture items.

21. The Court erred in that part of finding of fact numbered 24 which reads:
"All said sums were paid primarily for benefit of persons other than Granada debtor and other than bondholders."
and in not finding that both Pick and the holder of the Receiver's Certificate of Indebtedness had a prior lien on the property.

22. The Court erred in that part of finding of fact numbered 25 which reads:
"The Superior Court Judge was not told that Wenstrand

and others had signed the 1928 refinancing first mortgage bonds as makers thereof;"
and in not finding that proceedings for foreclosure were pending in that Court and that those facts were of record.

453 23. The Court erred in that part of finding of fact numbered 25 which reads:

"The opinion and findings of this Court in that matter as filed July 13, 1938 is incorporated as part hereof."
in that such finding is wholly immaterial, dealing with a separate matter and in no way binding upon the parties to this litigation.

24. That part of finding of fact numbered 26 reading as follows:

"Respondents and I. I. C. N. A. with knowledge, participated in a conspiracy the effect of which was to use the bondholders money a second time to purchase furniture and personal property for the Granada Hotel. The details of this conspiracy appear from beginning to end of the record."
is a legal conclusion not supported by any evidence in the record.

25. There is no evidence of record to sustain that part of finding of fact numbered 26 which reads:

"these facts were well known to the Central Republic Trust Company and City National Bank and Trust Company and were available to or known by Chicago Title & Trust Company."

26. There is no evidence of record to sustain that part of finding of fact numbered 26 which reads:

"By their efforts the bondholders money paid a second time for furniture at Granada."

27. There is no evidence of record to sustain that part of finding of fact numbered 28 which reads:

"The money misappropriated to buy furniture a second time and to pay to I. I. C. N. A. and sundry litigation
454 in many courts stopped completely all payments to bondholders. Creditors were hindered, delayed and defrauded."

28. There is no evidence of record to sustain that part of finding of fact numbered 28 which reads:

"Chicago Title and Trust Company as nominal receiver was a party to some of this diversion of trust funds, from creditors who were not informed. Respondents and the other signers, by stipulations, assisted in this breach of

trust, knowing that there would not remain money to pay the bondholders."

29. There is no evidence of record to sustain that part of finding of fact numbered 29 which reads:

"Plainly the cross bill was filed for that purpose."

30. The Court erred in making finding of fact numbered 30 as said finding of fact is a conclusion of law.

31. There is no evidence of record to sustain that part of finding of fact numbered 30 which reads:

"All parties knew it was defunct more than two (2) years when for the first time in August, 1933 proceedings to foreclose first trust deed and to issue receiver's certificate were attempted by cross bill."

32. The Court erred in that part of finding of fact numbered 30 which reads:

"All proceedings and the decree in Superior Court claim only a debt due from said defunct corporation and no one else."

and in not finding that foreclosure proceedings are proceedings in rem that are brought to enforce a lien and are not barred because the maker corporation is defunct.

33. The Court erred in that part of finding of fact 455 numbered 30 which reads:

"By the decree December 18, 1936 the presiding Judge of the Superior Court refused to allow or consider any accounting of the funds."

and in not finding that the decree in evidence shows that the Court did not undertake to pass on the plaintiff's account but does state the account as between the parties to the litigation and finds what remains due the plaintiff Trustee after allowing all credit on account of rents collected.

34. There is no evidence of record to sustain that part of fact finding numbered 31 which reads:

"Respondents and I. I. C. N. A. stress the contention that attorney Shanner did not participate in the proceeding in the Superior Court."

35. There is no evidence of record to sustain that part of finding of fact numbered 32 which reads:

"Nominees of Cody Trust Company physically and actually operated the property until January, 1934."

36. There is no evidence of record to sustain that part of finding of fact numbered 32 which reads:

"At that time school tax warrants owned by Granada needlessly were sold at a discount."

37. That part of finding of fact numbered 33 which reads:

"From October, 1932 the City National assumed and exercised real control over Granada affairs."
is contrary to the evidence.

38. That part of finding of fact numbered 33 which reads:

456 "Under the Illinois law at that time, no such question of title could be brought before the Court in a foreclosure proceeding. These acts were void."
is not a finding of fact but a conclusion of law and is erroneous.

39. That part of finding of fact numbered 34 which reads:

"This Bondholders Committee had no will of its own."
is contrary to the evidence of record.

40. There is no evidence of record to sustain that part of finding of fact numbered 34 which reads:

"From that time until the Court Trustee in these proceedings took possession under the order of May 17, 1937, City National Bank and Trust Company, claiming to be trustee in possession, operated the Granada Hotel property."
and it is contrary to the evidence.

41. That portion of finding of fact numbered 34 which reads as follows:

"City National installed intricate bookkeeping under which Granada moneys were shifted from one fund to another. City National and its alter ego, Granada Bondholders Committee entered into possession and engaged in various dilatory litigation, in Superior Court, County Court, this Court and Courts of Review."
is contrary to the evidence of record.

42. There is no evidence of record to sustain that part of finding of fact numbered 35 which reads:

"From 1929 when the new corporation was formed, until May 17, 1937 the actual operation and control of the Granada Hotel property was carried on by some representative of the Cody Trust Company or the Chicago Trust
457 Company or the Central Republic Trust Company or the City National Bank and Trust Company."

43. That part of finding of fact numbered 35 which reads:

"Since 1931 Edward Hall was this representative and was on the payroll when this Court took possession of the property in May, 1937."
is contrary to the evidence of record.

44. There is no evidence of record to sustain that part of finding of fact numbered 35 which reads:

"by various Chicago Banks who held them as collateral for loans to Chicago Trust Company."

45. There is no evidence of record to sustain that part of finding of fact numbered 36 which reads as follows:

"All these facts were known or available to City National."

46. The Court erred in making the entire finding of fact numbered 37 as such finding of fact is not a finding of ultimate fact and mere argument.

47. There is no evidence to sustain the second, third, fourth, fifth and sixth sentences of finding of fact numbered 38.

48. There is no evidence of record to sustain that part of finding of fact numbered 40 which reads:

"The Committee has been at all times dominated and controlled by City National. It existed solely as a service unit in City National trust department."

49. There is no evidence of record to support the first four sentences of finding of fact numbered 41 and such findings of fact are contrary to the evidence of record.

50. That part of finding of fact numbered 41 which reads:

"Although committees for Lincoln Park Manor, Arlington and Granada were dominated by the Trust department of City National * * * no serious effort has ever been made to reorganize said properties as a business unit. Rather the effort has been to prevent a unit reorganization of the three properties. Divide the bondholders, increase the expenditures, increase the difficulties of reorganizations, has been the method pursued with reference to these three properties, which from the engineering standpoint and their manner of construction were intended to be operated as a single unit."

is contrary to the evidence of record.

51. The Court erred in making that part of the finding of fact numbered 42 which reads:

"If the properties were not to be operated as a single unit but as antagonistic units, it was highly improper for the committee or City National or counsel to continue to represent more than one of them. A continuance of said representation at all times was a breach of trust which alone disentitles counsel or committee or City National to any compensation for services to Granada."

as said statements are conclusions of law and not statements of ultimate facts and are erroneous.

52. That part of finding of fact numbered 42 which reads:

"Instead of reorganizing three properties as a unit * * * City National officials at the beginning of 1934 consummated a course of action which had been planned for a year,
459 by charging off a balance of Four Thousand Eighty Dollars ($4,080) that had been regularly billed to Arlington and placed upon the Granada books of account, for the heat, hot and cold water and refrigeration services furnished by Granada during the year 1933."

is contrary to the evidence of record.

53. That part of finding of fact numbered 42 which reads:

"The charge (of which said sum is the unpaid balance) was made pursuant to the Barton contract."

is contrary to the evidence of record.

54. That part of finding of fact numbered 43 which reads:

"The purpose and effect of this attempted reduction was to enable the Arlington between 1933 and the present time to pay off entirely its taxes, and to leave the Granada with a tax bill about Sixty Thousand Dollars ($60,000) when these proceedings were begun."

is contrary to the evidence of record.

55. With respect to that part of the finding of fact numbered 43 which reads:

"At the same time this was done, the former rate of compensation paid by Lincoln Park Manor to Granada was continued and collected without change by respondents and City National as its trustee; and is being paid today by a lessee of that hotel."

the Court erred in making such a finding of fact without further finding that Lincoln Park Manor is being operated by a State Court receiver and that the rate of compensation paid has been fixed by order of the State Court.

56. There is no evidence of record to sustain that part of finding of fact numbered 43 which reads:

460 "This deliberate purpose to favor the Arlington, as against Granada by the reduction in charge forcibly made, is an additional breach of trust wholly without any warrant or reason and an intentional derogation from prior operation under the Barton contract with Granada as modified in 1930."

and it is contrary to the evidence of record.

57. That part of finding of fact numbered 43 which reads:

"That contract remains in force at this time."

is contrary to the evidence of record.

58. The Court erred in making that part of finding of fact numbered 43 which reads:

"After trial of this suit, Arlington, Inc. has refused to receive services under said contract since December 10, 1937;"

59. The Court erred in that part of finding of fact numbered 43 which reads:

"who have done this additional wrong to Granada."

as such is not a finding of fact but a conclusion of law.

60. There is no evidence to sustain that part of finding of fact numbered 43 which reads:

"Arlington, Inc. is officered and controlled by City National employees."

61. The Court erred in making that part of finding of fact numbered 44 which reads:

"Since the Granada property was built in 1924, one 461 set of attorneys * * * have represented * * * Cody Trust Company * * * Wenstrand and Hall as agents and nominees for said companies,"

without further finding that counsel for City National never represented Cody Trust Company, Wenstrand or Hall in any matter affecting the Granada property.

62. There is no evidence of record to support that part of finding of fact numbered 44 which reads:

"Throughout ten years of litigation a connected purpose is shown to prevent a clearance of this property from Court entanglements. As each suit came to adverse determination, a new one was begun in the name of some new Trust Company or some new nominee, whose name was used in some new suit or some new Court to delay, embarrass and harass creditors of the estate. Every effort has been made to pay with moneys from the Debtor estate, court expenses and legal expenses for maintaining and continuing these various ilitigations, and to protect the bankers and attorneys from their own wrongs and mistakes."

and same is contrary to the evidence.

63. The Court erred in making finding of fact numbered 45 in that most of such finding of fact is a legal conclusion and the remaining portions thereof are either not supported by any evidence of record or are directly contrary to the evidence of record.

64. That part of finding of fact numbered 46 contained in the first sentence thereof which reads:
"(self appointed by its own committee)"
is contrary to the evidence of record.

65. There is no evidence to support that part of finding of fact numbered 46 which reads:
462 "it dealt with Debtor property as though it were the general owner of all Granada affairs."

66. That part of finding of fact numbered 46 which reads:
"In practice City National made itself general trustee far beyond any supposed authority under the order of Superior Court."
is contrary to the evidence of record.

67. There is no evidence of record to sustain that part of finding of fact numbered 46 which reads:
"When City National, or the Committee, or the counsel, decided to take an action they did so as would an owner of the property, or they got stipulations and a Court order;"

68. That part of finding of fact numbered 46 which reads:
"But if the matter were something that City National did not want to do they took the stand that they were trustee in possession and free from Court control."
is contrary to the record.

69. The Court erred in making that part of finding of fact numbered 47 which reads:
"The cleverness with which this long train of affairs has been carried on for ten years, now in Court and now out of Court, to the utter defeat of all opposition by creditors or bondholders, shows how helpless the investor became; and the need for relief. For the purpose of carrying on litigation, when City National or the Committee or counsel decided to do so, they had abundance of money and unlimited power to act; but if it be something they do not wish to do, they take the opposite position that they are limited; could not replace the incinerator; could not make slight changes in the rentable
463 space on the first floor of the hotel; and could not do many other things which are mentioned in the record. There is no consistency at all in the shifting positions taken by the City National, the Bondholders Committee and their counsel in this record. They step into power and out of power, as for the moment suits their pleasure;

they claim or disclaim as they think is expedient at the time."

as such finding of fact contains either legal conclusions or such facts as are stated are not sustained by the evidence of record or are contrary to the evidence of record.

70. The Court erred in making that part of finding of fact numbered 48 which reads:

"City National Exhibit 'X' prepared early in 1924 provided an estimated basis of compensation between Granada Hotel and Arlington Hotel."

as said exhibit was not an estimate but the agreement.

71. There is no evidence of record to support that part of finding of fact numbered 48 which reads:

"The evidence shows these attorneys at one time or another represented all persons and trust companies having to do with Granada finances, except perhaps Mr. Mateer."

72. That part of finding of fact numbered 48 which reads:

"which was allowed to lag along until Cody Trust Company became insolvent and the Granada Committee was launched by the City National."

is contrary to the evidence of record.

73. The Court erred in making that part of finding of fact numbered 49 which reads:

"Absent a joint operation or a unit reorganization, there was an adverse financial interest between Granada and each of the other properties because of the services rendered by the Granada property to the other hotels.
464 Neither the attorneys, nor the committees which have an interlocking personnel, nor the City National as Trustee, could rightfully continue a common relationship to all these properties once this adverse interest was disclosed."

as such finding is not a finding of fact but a conclusion of law and is erroneous.

74. There is no evidence of record to support that part of finding of fact numbered 49 which reads:

"It is plain this adverse interest existed from the time Mr. Mateer ceased to own the stock of these three properties, and ceased to manage them as a unit enterprise. Control was taken from him in May 1929, when Granada Apartments, Inc., was organized."

75. The Court erred in making finding of fact numbered 50 as the large part of such finding of fact is not a finding of fact but a legal conclusion and such portions

as do state facts are either contrary to the evidence of record or there is no evidence to sustain such findings.

76. The Court erred in making that part of finding of fact numbered 51 which reads:

"By the foregoing and other acts of force, fraud and secrecy shown by evidence in this record, control was obtained and determinedly held over Debtor property for the purpose and with the effect to hinder, defraud and delay creditors of the Debtor. Respondents brought about that result."

as such is not a finding of fact but is an erroneous legal conclusion not justified by the evidence.

77. The Court erred in making finding of fact numbered 52 which reads:

"For any matter or action wherein City National, 465 its Committee or Counsel claim they were hindered by need for consent of Debtor Corporations or other persons, they are at fault by failure to make full disclosure, to demand consent, and obtain consent or refusal, and likewise by failure in this record to prove the same."

as such is not a finding of fact but a conclusion of law and an erroneous one not justified by the evidence.

78. Finding of fact numbered 53 which reads:

"The reasonable value of the heat, hot and cold water and refrigeration service which have been rendered to the Arlington hotel property by Granada until there was wilful cut off of pipes by respondents and refusal further to receive the services after December 10, 1937, is found to be at the rate of One Thousand Dollars ($1,000) per month."

is contrary not only to the oral opinion rendered by the Court but to the evidence and there is no evidence of record to sustain the finding.

79. The Court erred in making finding of fact numbered 54 which reads:

"Without need for repetition here in detail, the truth of all matters stated in answer and counterclaim by Court Trustee filed September 9, 1937, is fully established by evidence in the record. The Court Trustee has fully proven the substance of all matters claimed in his pleadings and herein enumerated, and Debtor estate is entitled to full relief for the wrongs asserted and proven of record. All the items claimed as credits by City National should be falsified, disallowed and ordered paid to Court Trustees with reasonable interest."

as it is either a conclusion of law or a finding of fact

not sustained either by evidence of record or is contrary to the evidence of record.

80. The Court erred in making finding of fact numbered 55 and each and every part thereof since it is not supported by any evidence of record and is in every
466 respect contrary to the evidence of record.

81. The Court erred in making finding of fact numbered 56 as such finding and every part thereof is contrary to the evidence; and the amounts there specified are, and each of them is, unreasonably, arbitrarily and unconscionably low.

82. The Court erred in making finding of fact numbered 57 in so far as it provides that City National, the Committee and their counsel are to pay their own costs and charges and are to be allowed no recovery therefor against the estate.

83. The Court erred in making finding of fact numbered 58 which is, in effect, an erroneous conclusion of law.

84. The Court erred in making conclusions of law as stated in paragraphs 59 to 72, both inclusive.

85. The Court erred in disregarding the binding effect of and in erroneously reviewing the following orders and decrees entered in the State Court: (a) order directing issuance of Receiver's Certificate; (b) order directing Chicago Title and Trust Company to make payment on account thereof; (c) order directing Central Republic Trust Company, as indenture Trustee, to assume and to pay balance; (d) order appointing City National Bank and Trust Company Successor Trustee; (e) order approving account filed by O'Connell, Receiver, on behalf of Central Republic Trust Company, as indenture Trustee; (f) order fixing and allowing Master's fees and taxing them as costs; and (g) decree of sale finding and
467 decreeing: (1) City National Bank and Trust Company the duly authorized, qualified and acting Successor Trustee; (2) amounts due it on accounting taken for its own use and benefit (including the fees of the Trustee and its counsel) and for the use and benefit of Bondholders and decreeing a lien on the property to secure payment of the same; (3) the amount due on and the lien of the Receiver's Certificate of Indebtedness; and (4) an accounting between the parties including the trustee-in-possession account down to September 30, 1936.

86. The Court erred in entering and making the following portions of the decree entered May 2, 1939:

(a) That said paragraph 5 and thereafter of Claim

No. 9 by said City National against the Debtor be wholly disallowed and dismissed for want of equity;

(b) That all petitions and claims for expenses and allowances by said City National, Bondholders Committee and their attorneys and counsel be wholly disallowed and dismissed for want of equity;

(c) That the petition by City National filed August 30, 1937 be allowed only so far that said City National be now discharged from making any further accounting as to the matters mentioned in this proceeding;

(d) That for all other purposes petition by City National be dismissed for want of equity;

(e) That said answer and counterclaim by Weightstill Woods, Court Trustee, filed September 9, 1937 be sustained and allowed in favor of the Court Trustee and that said recovery be effective as a recoupment to extinguish any and all claims at this date by said City National, Bondholders Committee and their counsel of record, without
468 prejudice, however, to the right and power of the Court to make disposition of the petition of the Committee relating to title charges now pending before Referee Chindblom.

(f) That the Court deems it practicable and desirable and decree that application of Chapter II and Chapter X of the Bankruptcy Law, as amended by Act of Congress approved by the President June 22, 1938, shall be made to this litigation, such application being made for the promotion of justice.

87. The Court erred in admitting the testimony of J. A. Lenz and in overruling the objection of Appellants to the admission thereof and their motion to strike same.

88. The Court erred in sustaining objections of Appellee to testimony of A. J. Schanfarber relating to the worth of carpets, ozite, in-a-door beds, china and kitchen cases in the year 1933 installed in Granada Apartments and in refusing to admit the testimony so objected to.

89. The Court erred in entertaining and in allowing the answer, objections and counterclaim of Court Trustee since the Court Trustee had no better or further claim than the Debtor and the Debtor's claim, if any, was barred by the said orders of the State Court and by estoppel, acquiescence, approval and ratification, and Court Trustee had no right to represent creditors, if any, without evidence to sustain finding of fraudulent conveyance with intent to hinder, delay and defraud creditors.

90. The Court erred in sustaining the objection of Appellee to the admission in evidence of City National's Exhibit A-3 and in refusing to admit as evidence said Exhibit.

469 91. The Court erred in failing to make the findings of fact and conclusions of law as submitted by Appellants to the Court on December 22, 1937 formally filed in these proceedings on September 30, 1938, said findings of fact and conclusions of law being entitled "Suggestions and Objections of City National Bank and Trust Company of Chicago, Charles S. Tuttle, *et al.*, and Defrees, Buckingham, Jones & Hoffman to the Decree, Findings of Fact and Conclusions of Law Drafted by the Court Trustee and Presented to the Court September 24, 1936."

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
Attorneys for City National Bank and Trust Company of Chicago, individually and as Successor Trustee under indenture securing Granada Apartments First Mortgage Bonds; Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933, with respect to said Bonds; and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffmann.

Appellants.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
105 South La Salle Street,
Chicago, Illinois,
Attorneys for Appellants.

512 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

I, Hoyt King, Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, Do Hereby Certify that copy of Notice of Appeal was mailed on the first day of June, A. D. 1939 to the Attorneys whose names and addresses appear on the attached list, in the case stated thereon, as follows:

513 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—65811) * *

514 LIST OF PARTIES AND COUNSEL.

1. Granada Apartments, Inc., Counsel: Mort D. and Frank Goldberg, 11 South La Salle Street.
2. Granada Apartments Hotel Corporation, Weightstill Woods, Treasurer, 77 West Washington Street.
3. Florence Newman, Counsel: David H. Greenberg, 134 North La Salle Street.
4. Edwin Rosenberg and Charles Cunningham, Receiver, Counsel: Samuel Micon, 134 North La Salle Street.
5. Maurice M. Kraft, Counsel: David H. Kraft, 160 North La Salle Street.
6. Stephen L. Ingersoll, as Agent for Cordelia L. Ingersoll, as Executrix of the Estate of Stephen A. Ingersoll, Deceased, Counsel: Loucks & Hennings, 10 South La Salle Street.
7. Edla and Emil W. Christiansen, Counsel: Cassels, Potter & Bently, 209 South La Salle Street.
8. G. R. Curnock, Counsel: R. W. Proctor, 10 South La Salle Street.
9. Reconstruction Finance Corporation, Counsel: Lee Walker, 164 West Jackson Boulevard.

515 10. Indemnity Insurance Company of North America, a corporation, Counsel: Dent, Weichelt & Hampton, 209 South La Salle Street.

11. E. W. Wenstrand, Counsel: Leo L. Donahoe, 155 North Clark Street.

12. Continental Illinois National Bank and Trust Com-

pany of Chicago, Counsel: Mayer, Meyer, Austrian & Platt, 231 South La Salle Street.

13. Charles H. Albers, Receiver, Counsel: William J. Flaherty, 1 North La Salle Street.

14. Harris Trust and Savings Bank, Counsel: Chapman and Cutler, 111 West Monroe Street.

15. I. Gordon, J. Rose, Sam Harris and M. Bernard Greenberg, Petitioning Creditors, Counsel: David H. Greenberg, 134 North La Salle Street.

16. Weightstill Woods, Court Trustee, Counsel: Weightstill Woods, 77 West Washington Street.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Court this 16th day of August, A. D. 1939.

Hoyt King,
Clerk.

(Seal)

2 In the District Court of the United States. Entered June 30, 1939.
* * (Caption—65811) * *

Be It Remembered, that the following Order was entered in the above-entitled cause, in the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the Twentieth day of June, A. D. 1939.

3 In the District Court of the United States.
* * (Caption—65811) * *

Tuesday, June 20, A. D. 1939.

Present: Honorable John P. Barnes, District Judge.

It Is Ordered by the Court that this cause be and the same is hereby continued to November, 16, A. D. 1939 for Final Decree.

516 Northern District of Illinois, } ss:
Eastern Division, }

I, Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Designations filed in this Court in the cause entitled In the Matter of Granada Apartments, Inc., a corporation, Debtor No. 65811 as the same appear from the original records and files thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 17th day of August, A. D. 1939.

Hoyt King,
Clerk.

(Seal)

And on, to wit: On the twelfth day of June, 1939, there was filed in the Office of the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit the following Assignment of Errors, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

Filed June 12, 1939.

For the Seventh Circuit.

No. 6986.

In the Matter of

Granada Apartments, Inc., a corporation,

Debtor.

City National Bank and Trust Company of Chicago, individually and as Successor Trustee, etc., et al.,

Appellants,

vs.

Weightstill Woods, Court Trustee, et al.,

Appellees.

Petition for appeal from order entered in Case No. 65811 in the District Court of the United States for the Northern District of Illinois, Eastern Division, denying fees and expenses to Bondholders Protective Committee, Trustee under First Mortgage Indenture and to Defrees, Buckingham, Jones & Hoffman, as their Attorneys, and sustaining and allowing counterclaim by Weightstill Woods, as Court Trustee.

Honorable John P. Barnes, Judge Presiding.

ASSIGNMENT OF ERRORS.

Now come the Petitioners, City National Bank and Trust Company of Chicago, as Successor Trustee under trust indenture securing Granada Apartments First Mortgage Bonds, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee acting under Deposit Agreement for the Holders of said Bonds, and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman, and file the following assignment of errors to the entry of the order of May 2, 1939 from which leave to appeal is prayed:

1. The Court erred in making its finding of fact numbered 2 to the extent that it finds as a matter of law that the Federal Trustee is acting "under Chapters II and X of amended law."

2. There is no evidence of record to sustain that part of finding of fact numbered 4 which reads "to defend and is now carrying on this litigation, by order of the Court," and it is contrary to the evidence of record.

3. The Court erred in making its finding of fact numbered 10 to the extent that it finds Chapters II and X of the bankruptcy amendments applicable to this litigation.

4. The Court erred in making its fact finding numbered 12 to the extent that it finds that Mateer owned the corporate stock.

5. There is no evidence of record to sustain that part of finding of fact numbered 14 which reads:

"There was a failure by Chicago Trust Company and its counsel to see to it that the furniture and fixtures in the Granada Hotel were paid for out of the proceeds of that loan."

6. There is no evidence of record to sustain that part of finding of fact numbered 14 which reads:

"They charge Granada Hotel Corporation more than One Hundred Twenty Thousand Dollars ($120,000)."

7. There is no evidence of record to sustain finding of fact numbered 15.

8. There is no evidence of record to sustain that part of finding of fact numbered 16 which reads:

"The increase over 1924 was about Three Hundred Thousand Dollars ($300,000)."

9. There is no evidence of record to sustain that part of finding of fact numbered 16 which reads:

"Again there was a failure to pay off the claim of Albert Pick & Company, out of the proceeds of the new financing."

10. That part of finding of fact numbered 17 which reads:

"In the Wenstrand suit in this Court bonds were given of $5,000, $20,000 and finally $40,000 to stay the sale."

is contrary to the evidence.

11. There is no evidence of record to sustain that part of the finding of fact numbered 19 which reads:

"To protect those who initiated the bond issue and sold the bonds, another employee or nominee of Cody Trust named Thuma, was now used to file on June 10, 1930 a suit for partial foreclosure in the Superior Court of Cook County, upon a claim of default upon certain interest coupons of the 1928 second mortgage Granada issue."

and it is contrary to the evidence of record.

12. There is no evidence of record to sustain that part of finding of fact numbered 20 which reads:

"as part of this action by direction of those who initiated the bond issue and sold the bonds, a conditional sales contract was issued to La Salle Furniture and Supply Company for Thirty-five Thousand Dollars ($35,000)."

13. There is no evidence of record to sustain that part of finding of fact numbered 20 which reads:

"It was a corporation organized by Cody Trust Officers and their counsel for this one transaction. The Bankers thus made their own collateral."

14. There is no evidence of record to sustain the first sentence of finding of fact numbered 22.

15. There is no evidence of record to sustain that part of finding of fact numbered 23 which reads:

"Mr. Mateer definitely passed out of the enterprise. This corporation never had an independent will of its own. An Agreement was made between Chicago Trust Company and Cody Trust Company, whereby the latter (as between them) had the duty to see that the Pick claim was disposed of out of the proceeds of refinancing of 1928."

16. There is no evidence of record to sustain that part of finding of fact numbered 23 which reads:

"an agreement was negotiated by Edward Hall, another employee and nominee of the Cody Trust Company and City National, who was then in charge at Granada, cooperating with their attorneys."

17. There is no evidence of record to sustain that part of finding of fact numbered 23 which reads:

"Thereby the right established in Superior Court to remove said fixtures from the hotel was sold to the Central Republic Trust Company, as successor Trustee under the 1928 refinancing trust deed."

18. That part of fact finding numbered 23 reading "To carry out this agreement" is contrary to the evidence.

19. The Court erred in making that part of finding of fact numbered 24 which reads:

"A stipulation was signed by attorneys and some parties in the Superior Court case, and upon that an order was entered directing the Chicago Title and Trust Company to issue a Receiver's Certificate to obtain money."

and in not finding that the order was entered not only upon the stipulation but upon a petititon duly filed.

20. The Court erred in finding of fact numbered 24 which reads:

"Services of said attorneys were performed to protect persons other than the bondhlders."

and in not finding that the services were rendered in fixture litigation in the Superior Court, the Appellate Court and the Supreme Court of Illinois for the purpose of keeping in the building the alleged fixture items.

21. The Court erred in that part of finding of fact numbered 24 which reads:

"All said sums were paid primarily for benefit of persons other than Granada debtor and other than Bondholders."

and in not finding that both Pick and the holder of the Receiver's Certificate of Indebtedness had a prior lien on the property.

22. The Court erred in that part of finding of fact numbered 25 which reads:

"The Superior Court Judge was not told that Wenstrand and others had signed the 1928 refinancing first mortgage bonds as makers thereof;"

and in not finding that proceedings for foreclosure were pending in that Court and that those facts were of record.

23. The Court erred in that part of finding of fact numbered 25 which reads:

"The opinion and findings of this Court in that matter as filed July 13, 1938 is incorporated as part hereof."

in that such finding is wholly immaterial, dealing with a separate matter and in no way binding upon the parties to this litigation.

24. That part of finding of fact numbered 26 reading as follows:

"Respondents and I. I. C. N. A. with knowledge, participated in a conspiracy the effect of which was to use the bondholders money a second time to purchase furniture and personal property for the Granada Hotel. The details of this conspiracy appear from beginning to end of the record."

is a legal conclusion not supported by any evidence in the record.

25. There is no evidence of record to sustain that part of finding of fact numbered 26 which reads:

"these facts were well known to the Central Republic Trust Company and City National Bank and Trust Company and were available to or known by Chicago Title & Trust Company."

26. There is no evidence of record to sustain that part of finding of fact numbered 26 which reads:

"By their efforts the bondholders money paid a second time for furniture at Granada."

27. There is no evidence of record to sustain that part of finding of fact numbered 28 which reads:

"The money misappropriated to buy furniture a second

time and to pay to I. I. C. N. A. and sundry litigation in many courts stopped completely all payment to bondholders. Creditors were hindered, delayed and defrauded."

28. There is no evidence of record to sustain that part of finding of fact numbered 28 which reads:

"Chicago Title and Trust Company as nominal receiver was a party to some of this diversion of trust funds, from creditors who were not informed. Respondents and the other signers, by stipulations, assisted in this breach of trust, knowing that there would not remain money to pay the bondholders."

29. There is no evidence of record to sustain that part of finding of fact numbered 29 which reads:

"Plainly the cross bill was filed for that purpose."

30. The Court erred in making finding of fact numbered 30 as said finding of fact is a conclusion of law.

31. There is no evidence of record to sustain that part of finding of fact numbered 30 which reads:

"All parties knew it was defunct more than two (2) years when for the first time in August, 1933 proceedings to foreclose first trust deed and to issue receiver's certificate were attempted by cross bill."

32. The Court erred in that part of finding of fact numbered 30 which reads:

"All proceedings and the decree in Superior Court claim only a debt due from said defunct corporation and no one else."

and in not finding that foreclosure proceedings are proceedings in rem that are brought to enforce a lien and are not barred because the maker corporation is defunct.

33. The Court erred in that part of finding of fact numbered 30 which reads:

"By the decree December 18, 1936 the presiding Judge of the Superior Court refused to allow or consider any accounting of the funds."

and in not finding that the decree in evidence shows that the Court did not undertake to pass on the plaintiff's account but does state the account as between the parties to the litigation and finds what remains due the plaintiff Trustee after allowing all credit on account of rents collected.

34. There is no evidence of record to sustain that part of fact finding numbered 31 which reads:

"Respondents and I. I. C. N. A. stress the contention that attorney Shanner did not participate in the proceeding in the Superior Court."

35. There is no evidence of record to sustain that part of finding of fact numbered 32 which reads:

"Nominees of Cody Trust Company physically and actually operated the property until January 1934."

36. There is no evidence of record to sustain that part of finding of fact numbered 32 which reads:

"At that time school tax warrants owned by Granada needlessly were sold at a discount."

37. That part of finding of fact numbered 33 which reads:

"From October, 1932 the City National assumed and exercised real control over Granada affairs."

is contrary to the evidence.

38. That part of finding of fact numbered 33 which reads:

"Under the Illinois law at that time, no such question of title could be brought before the Court in a foreclosure proceeding. These acts were void."

is not a finding of fact but a conclusion of law and is erroneous.

39. That part of finding of fact numbered 34 which reads:

"This Bondholders Committee had no will of its own."

is contrary to the evidence of record.

40. There is no evidence of record to sustain that part of finding of fact numbered 34 which reads:

"From that time until the Court Trustee in these proceedings took possession under the order of May 17, 1937, City National Bank and Trust Company, claiming to be trustee in possession, operated the Granada Hotel property."

and it is contrary to the evidence.

41. That portion of finding of fact numbered 34 which reads as follows:

"City National installed intricate bookkeeping under which Granada moneys were shifted from one fund to another. City National and its alter ego, Granada Bondholders Committee entered into possession and engaged in various dilatory litigation, in Superior Court, County Court, this Court and Courts of Review."

is contrary to the evidence of record.

42. There is no evidence of record to sustain that part of finding of fact numbered 35 which reads:

"From 1929 when the new corporation was formed, until May 17, 1937 the actual operation and control of the Granada Hotel property was carried on by some representative

of the Cody Trust Company or the Chicago Trust Company or the Central Republic Trust Company or the City National Bank and Trust Company."

43. That part of finding of fact numbered 35 which reads:

"Since 1931 Edward Hall was this representative and was on the payroll when this Court took possession of the property in May, 1937."

is contrary to the evidence of record.

44. There is no evidence of record to sustain that part of finding of fact numbered 33 which reads:

"By various Chicago Banks who held them as collateral for loans to Chicago Trust Company."

45. There is no evidence of record to sustain that part of finding of fact numbered 36 which reads as follows:

"All these facts were known or available to City National."

46. The Court erred in making the entire finding of fact numbered 37 as such finding of fact is not a finding of ultimate fact and mere argument.

47. There is no evidence to sustain the second, third, fourth, fifth and sixth sentences of finding of fact numbered 38.

48. There is no evidence of record to sustain that part of finding of fact numbered 40 which reads:

"The Committee has been at all times dominated and controlled by City National. It existed solely as a service unit in City National trust department."

49. There is no evidence of record to support the first four sentences of finding of fact numbered 41 and such findings of fact are contrary to the evidence of record.

50. That part of finding of fact numbered 41 which reads:

"Although committees for Lincoln Park Manor, Arlington and Granada were dominated by the Trust department of City National * * * no serious effort has ever been made to reorganize said properties as a business unit. Rather the effort has been to prevent a unit reorganization of the three properties. Divide the bondholders, increase the expenditures, increase the difficulties of reorganizations, has been the method pursued with reference to these three properties, which from the engineering standpoint and their manner of construction were intended to be operated as a single unit."

is contrary to the evidence of record.

51. The Court erred in making that part of the finding of fact numbered 42 which reads:

"If the properties were not to be operated as a single unit but as antagonistic units, it was highly improper for the committee or City National or counsel to continue to represent more than one of them. A continuance of said representation at all times was a breach of trust which alone disentitles counsel or committee or City National to any compensation for services to Granada."

as said statements are conclusions of law and not statements of ultimate facts and are erroneous.

52. That part of finding of fact numbered 42 which reads:

"Instead of reorganizing three properties as a unit • • • City National officials at the beginning of 1934 consummated a course of action which had been planned for a year, by charging off a balance of Four Thousand Eighty Dollars ($4,080) that had been regularly billed to Arlington and placed upon the Granada books of account, for the heat, hot and cold water and refrigeration services furnished by Granada during the year 1933."

is contrary to the evidence of record.

53. That part of finding of fact numbered 42 which reads:

"The charge (of which said sum is the unpaid balance) was made pursuant to the Barton contract."

is contrary to the evidence of record.

54. That part of finding of fact numbered 43 which reads:

"The purpose and effect of this attempted reduction was to enable the Arlington between 1933 and the present time to pay off entirely its taxes, and to leave the Granada with a tax bill about Sixty Thousand Dollars ($60,000) when these proceedings were begun."

is contrary to the evidence of record.

55. With respect to that part of the finding of fact numbered 43 which reads:

"At the same time this was done, the former rate of compensation paid by Lincoln Park Manor to Granada was continued and collected without change by respondents and City National as its trustee; and is being paid today by a lessee of that hotel."

the Court erred in making such a finding of fact without further finding that Lincoln Park Manor is being operated by a State Court receiver and that the rate of compensation paid has been fixed by order of the State Court.

56. There is no evidence of record to sustain that part of finding of fact numbered 43 which reads:

"This deliberate purpose to favor the Arlington, as against Granada by the reduction in charge forcibly made, is an additional breach of trust wholly without any warrant or reason and an intentional derogation from prior operation under the Barton contract with Granada as modified in 1930."

and it is contrary to the evidence of record.

57. That part of finding of fact numbered 43 which reads:

"That contract remains in force at this time."

is contrary to the evidence of record.

58. The Court erred in making that part of finding of fact numbered 43 which reads:

"After trial of this suit, Arlington, Inc. has refused to receive services under said contract since December 10, 1937;"

59. The Court erred in that part of finding of fact numbered 43 which reads:

"who have done this additional wrong to Granada."

as such is not a finding of fact but a conclusion of law.

60. There is no evidence to sustain that part of finding of fact numbered 43 which reads:

"Arlington, Inc. is officered and controlled by City National employees."

61. The Court erred in making that part of finding of fact numbered 44 which reads:

"Since the Granada property was built in 1924, one set of attorneys * * * have represented * * * Cody Trust Company * * * Wenstrand and Hall as agents and nominees for said companies,"

without further finding that counsel for City National never represented Cody Trust Company, Wenstrand or Hall in any matter affecting the Granada property.

62. There is no evidence of record to support that part of finding of fact numbered 44 which reads:

"Throughout ten years of litigation a connected purpose is shown to prevent a clearance of this property from Court entanglements. As each suit came to adverse determination, a new one was begun in the name of some new Trust Company or some new nominee, whose name was used in some new suit or some new Court to delay, embarrass and harass creditors of the estate. Every effort has been made to pay with moneys from the Debtor estate, court expenses and legal expenses for maintaining and con-

tinuing these various litigations, and to protect the bankers and attorneys from their own wrongs and mistakes."
and same is contrary to the evidence.

63. The Court erred in making finding of fact numbered 45 in that most of such finding of fact is a legal conclusion and the remaining portions thereof are either not supported by any evidence of record or are directly contrary to the evidence of record.

64. That part of finding of fact numbered 46 contained in the first sentence thereof which reads:
"(self appointed by its own committee)"
is contrary to the evidence of record.

65. There is no evidence to support that part of finding of fact numbered 46 which reads:
"it dealt with Debtor property as though it were the general owner of all Granada affairs."

66. That part of finding of fact numbered 46 which reads:

"In practice City National made itself general trustee far beyond any supposed authority under the order of Superior Court."
is contrary to the evidence of record.

67. There is no evidence of record to sustain that part of finding of fact numbered 46 which reads:

"When City National, or the Committee, or the counsel, decided to take an action they did so as would an owner of the property, or they got stipulations and a Court order;"

68. That part of finding of fact numbered 46 which reads:

"But if the matter were something that City National did not want to do they took the stand that they were trustee in possession and free from Court control."
is contrary to the record.

69. The Court erred in making that part of finding of fact numbered 47 which reads:

"The cleverness with which this long train of affairs has been carried on for ten years, now in Court and now out of Court, to the utter defeat of all opposition by creditors or bondholders, shows how helpless the investor became; and the need for relief. For the purpose of carrying on litigation, when City National or the Committee or counsel decided to do so, they had abundance of money and unlimited power to act; but if it be something they do not wish to do, they take the opposite position that they are limited; could not replace the incinerator; could not

make slight changes in the rentable space on the first floor of the hotel; and could not do many other things which are mentioned in the record. There is no consistency at all in the shifting positions taken by the City National, the Bondholders Committee and their counsel in this record. They step into power and out of power, as for the moment suits their pleasure; they claim or disclaim as they think it expedient at the time."

as such finding of fact contains either legal conclusions or such facts as are stated are not sustained by the evidence of record or are contrary to the evidence of record.

70. The Court erred in making that part of finding of fact numbered 48 which reads:

"City National Exhibit 'X' prepared early in 1924 provided an estimated basis of compensation between Granada Hotel and Arlington Hotel."

as said exhibit was not an estimate but the agreement.

71. There is no evidence of record to support that part of finding of fact numbered 48 which reads:

"The evidence shows these attorneys at one time or another represented all persons and trust companies having to do with Granada finances, except perhaps Mr. Mateer."

72. That part of finding of fact numbered 48 which reads:

"which was allowed to lag along until Cody Trust Company became insolvent and the Granada Committee was launched by the City National."

is contrary to the evidence of record.

73. The Court erred in making that part of finding of fact numbered 49 which reads:

"Absent a joint operation or a unit reorganization, there was an adverse financial interest between Granada and each of the other properties because of the services rendered by the Granada property to the other hotels. Neither the attorneys, nor the committees which have an interlocking personnel, nor the City National as Trustee, could rightfully continue a common relationship to all these properties once this adverse interest was disclosed."

as such finding is not a finding of fact but a conclusion of law and is erroneous.

74. There is no evidence of record to support that part of finding of fact numbered 49 which reads:

"It is plain this adverse interest existed from the time Mr. Mateer ceased to own the stock of these three properties, and ceased to manage them as a unit enter-

prise. Control was taken from him in May, 1929, when Granada Apartments Inc. was organized.

75. Court erred in making finding of fact numbered 50 as the large part of such finding of fact is not a finding of fact but a legal conclusion and such portions as do state facts are either contrary to the evidence of record or there is no evidence to sustain such findings.

76. The Court erred in making that part of finding of fact numbered 51 which reads:

"By the foregoing and other acts of force, fraud and secrecy shown by evidence in this record, control was obtained and determinedly held over Debtor property for the purpose and with the effect to hinder, defraud and delay creditors of the Debtor. Respondents brought about that result."

as such is not a finding of fact but is an erroneous legal conclusion not justified by the evidence.

77. The Court erred in making finding of fact numbered 52 which reads:

"For any matter or action wherein City National, its Committee or Counsel claim they were hindered by need for consent of Debtor Corporations or other persons, they are at fault by failure to make full disclosure, to demand consent, and obtain consent or refusal, and likewise by failure in this record to prove the same."

as such is not a finding of fact but a conclusion of law and an erroneous one not justified by the evidence.

78. Finding of fact numbered 53 which reads:

"The reasonable value of the heat, hot and cold water and refrigeration service which have been rendered to the Arlington Hotel property by Granada until there was wilful cut off of pipes by respondents and refusal further to receive the services after December 10, 1937, is found to be at the rate of One Thousand Dollars ($1,000) per month."

is contrary not only to the oral opinion rendered by the Court but to the evidence and there is no evidence of record to sustain the finding.

79. The Court erred in making finding of fact numbered 54 which reads:

"Without need for repetition here in detail, the truth of all matters stated in answer and counterclaim by Court Trustee filed September 9, 1937, is fully established by evidence in the record. The Court Trustee has fully proven the substance of all matters claimed in his pleadings and herein enumerated, and Debtor estate is entitled

to full relief for the wrongs asserted and proven of record. All the items claimed as credits by City National should be falsified, disallowed and ordered paid to Court Trustee with reasonable interest."
as it is either a conclusion of law or a finding of fact not sustained either by evidence of record or is contrary to the evidence of record.

80. The Court erred in making finding of fact numbered 55 and each and every part thereof since it is not supported by any evidence of record and is in every respect contrary to the evidence of record.

81. The court erred in making finding of fact numbered 56 as such finding and every part thereof is contrary to the evidence; and the amounts there specified are, and each of them is, unreasonably, arbitrarily and unconscionably low.

82. The Court erred in making finding of fact numbered 57 in so far as it provides that City National, the Committee and their counsel are to pay their own costs and charges and are to be allowed no recovery therefor against the estate.

83. The Court erred in making finding of fact numbered 58 which is, in effect, an erroneous conclusion of law.

84. The Court erred in making conclusions of law as stated in paragraphs 59 to 72, both inclusive.

85. The Court erred in disregarding the binding effect of and in erroneously reviewing the following orders and decrees entered in the State Court: (a) order directing issuance of Receiver's Certificate; (b) order directing Chicago Title and Trust Company to make payment on account thereof; (c) order directing Central Republic Trust Company, as indenture Trustee, to assume and to pay balance; (d) order appointing City National Bank and Trust Company Successor Trustee; (e) order approving account filed by O'Connell, Receiver, on behalf of Central Republic Trust Company, as indenture Trustee; (f) order fixing and allowing Master's fees and taxing them as costs; and (g) decree of sale finding and decreeing: (1) City National Bank and Trust Company the duly authorized, qualified and acting Successor Trustee; (2) amounts due it on accounting taken for its own use and benefit (including the fees of the Trustee and its counsel) and for the use and benefit of Bondholders and decreeing a lien on the property to secure payment of

the same; (3) the amount due on and the lien of the Receiver's Certificate of Indebtedness; and (4) an accounting between the parties including the trustee-in-possession account down to September 30, 1936.

86. The court erred in entering and making the following portions of the decree entered May 2, 1939:

(a) That said paragraphs 5 and thereafter of Claim No. 9 by said City National against the Debtor be wholly disallowed and dismissed for want of equity;

(b) That all petitions and claims for expenses and allowances by said City National, Bondholders Committee and their attorneys and counsel be wholly disallowed and dismissed for want of equity;

(c) That the petition by City National filed August 30, 1937 be allowed only so far that said City National be now discharged from making any further accounting as to the matters mentioned in this proceeding;

(d) That for all other purposes petition by City National be dismissed for want of equity;

(e) That said answer and counterclaim by Weightstill Woods, Court Trustee, filed September 9, 1937 be sustained and allowed in favor of the Court Trustee and that said recovery be effective as a recoupment to extinguish any and all claims at this date by said City National, Bondholders Committee and their counsel of record, without prejudice, however, to the right and power of the Court to make disposition of the petition of the Committee relating to title charges now pending before Referee Chindblom.

(f) That the Court deems it practicable and desirable and decrees that application of Chapter II and Chapter X of the Bankruptcy Law, as amended by Act of Congress approved by the President June 22, 1938, shall be made to this litigation, such application being made for the promotion of justice.

87. The Court erred in admitting the testimony of J. A. Lenz and in overruling the objection of Appellants to the admission thereof and their motion to strike same.

88. The Court erred in sustaining objections of Appellee to testimony of A. J. Schanfarber relating to the worth of carpets, ozite, in-a-door beds, china and kitchen cases in the year 1933 installed in Granada Apartments and in refusing to admit the testimony so objected to.

89. The Court erred in entertaining and in allowing the answer, objections and counterclaim of Court Trustee

since the Court Trustee had no better or further claim than the Debtor and the Debtor's claim, if any, was barred by the said orders of the State Court and by estoppel, acquiescence, approval and ratification, and Court Trustee had no right to represent creditors, if any, without evidence to sustain finding of fraudulent conveyance with intent to hinder, delay and defraud creditors.

90. The Court erred in sustaining the objection of Appellee to the admission in evidence of City National's Exhibit A-3 and in refusing to admit as evidence said Exhibit.

91. The Court erred in failing to make the findings of fact and conclusions of law as submitted by Appellants to the Court on December 22, 1937 and formally filed in these proceedings on September 30, 1938, said findings of fact and conclusions of law being entitled "Suggestions and Objections of City National Bank and Trust Company of Chicago, Charles S. Tuttle, *et al.*, and Defrees, Buckingham, Jones & Hoffman to the Decree, Findings of Fact and Conclusions of Law Drafted by the Court Trustee and Presented to the Court September 24, 1936."

City National Bank and Trust Company of Chicago, individually and as Successor Trustee under indenture securing Granada Apartments First Mortgage Bonds; Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933, with respect to said Bonds; and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman,

Petitioners,

By Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
Their Attorneys.

Entered June 22, 1939.

And afterwards on, to wit, the 22nd day of June, 1939, the following further proceedings were had and entered of record:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

June 22, 1939.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Walter E. Treanor, Circuit Judge.

(Caption No. 6986)

It is ordered by the Court that the petition of City National Bank and Trust Company of Chicago, etc., *et al.*, for leave to appeal from the order or decree of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered on May 2, 1939, in the matter of Granada Apartments, Inc., Debtor, be, and it is hereby, granted, and an appeal from said order or decree is hereby allowed.

It is further ordered that appellants file an appeal bond in the sum of two hundred and fifty dollars within ten days from this date.

Entered Oct. 4, 1939.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

Wednesday, October 4, 1939.

Court met pursuant to adjournment.

Before: Hon. Wm. M. Sparks, Hon. J. Earl Major and Otto Kerner, Circuit Judges.

* * (Caption—6986 and 7060) * *

ORDER.

This cause coming on to be heard upon motion of City National Bank and Trust Company of Chicago, individually and as Successor Trustee under indenture securing

Granada Apartments First Mortgage Bonds, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee, acting under the Deposit Agreement dated April 25, 1933, with respect to said bonds, and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman, Appellants herein, and the Court being fully advised in the premises, It Is Ordered:

(a) That the appeal of Appellants allowed by this Court and now pending in this Court as cause number 6986, and the appeal of Appellants taken to this Court pursuant to notice of appeal heretofore filed in the District Court of the United States for the Northern District of Illinois, Eastern Division, and now pending in this Court as the above entitled cause number 7060, be consolidated as cause number 6986;

(b) That the transcript of record now filed with the Clerk of this Court in cause number 6986 and the transcript of record now filed with the Clerk of this Court in the above entitled cause number 7060, be consolidated and stand as the single consolidated transcript of record in both of said appeals as so consolidated;

(c) That the Clerk of this Court be and he is directed to cause to be printed only such portions of the single consolidated transcript of record as are designated in "Exhibit A" attached to the said above mentioned motion and made a part thereof, including the printing of a condensed and narrative statement of the transcript of proceedings now filed with the Clerk of this Court in the above entitled cause number 7060 and of a summary statement of certain exhibits attached to said condensed and narrative statement, in lieu of the printing of said transcript of proceedings and said exhibits in full, and that the said single consolidated transcript of record as so now filed and the said single printed transcript of record shall stand as the transcript of record in both of said appeals as so consolidated, with leave to any party where necessary or desirable to refer by citation to the transcript by page as well as to the printed transcript; and

(d) That Appellants be permitted to file one brief and one reply brief with respect to both appeals as so consolidated, and that each of the Appellees be permitted to file one brief with respect to both appeals as so consoli-

dated, the said respective briefs and reply to stand as the briefs and reply briefs in both of said appeals as so consolidated.

Endorsed: In the United States Circuit Court of Appeals. * * (Caption—7060) * * Order.

UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—6986) * *

United States of America } ss.

The President of the United States, To Weightstill Woods, Court Trustee, Granada Apatrments, Inc., a corporation, Granada Apartments Hotel Corporation, a corporation, Florence Newman, Edwin Rosenberg, Charles Cunningham, as Receiver, Maurice M. Kraft, Stephen L. Ingersoll, as Agent for Cordelia L. Ingersoll, as Executrix of the Estate of Stephen A. Ingersoll, Deceased, Edla Christiansen, Emil W. Christiansen, G. R. Curnock, Reconstruction Finance Corporation, a corporation, Indemnity Insurance Company of North America, a corporation, E. W. Wenstrand, Continental Illinois National Bank and Trust Company of Chicago, a corporation, Charles H. Albers, as Receiver, Harris Trust and Savings Bank, a corporation, I. Gordon, J. Rose, Sam Harris and M. Bernard Greenberg, Greetings:

You Are Hereby Cited and Admonished to be and appear at the United States Circuit Court of Appeals for the Seventh Circuit, to be holden at Chicago, Illinois, within thirty (30) days from June 22, 1939, pursuant to an order allowing an appeal filed in the Clerk's Office of the United States Circuit Court of Appeals for the Seventh Circuit, wherein City National Bank and Trust Company of Chicago, individually and as Successor Trustee under Indenture securing Granada Apartments First Mortgage Bonds, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933, with respect to said Bonds, George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Bucking-

ham, Jones & Hoffman, are Appellants and you are Appellees, to show cause, if any there be, why the order entered May 2, 1939, rendered against the Appellants as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable J. Earl Major, Judge of the United States Circuit Court of Appeals, this 30th day of June, in the year of our Lord One Thousand Nine Hundred and Thirty-nine.

J. Earl Major,
Judge of the United States Circuit Court of Appeals.

Service of a copy of the foregoing citation is acknowledged this 6th day of July, 1939.

Weightstill Woods,
Weightstill Woods,
Attorney Pro Se.

Mort D. and Frank Goldberg,
Mort D. and Frank Goldberg,
Attorneys for Granada Apartments, Inc.

David H. Greenberg,
David H. Greenberg,
Attorney for Florence Newman.

Samuel Micon,
Samuel Micon,
Attorney for Edwin Rosenberg and Charles Cunningham, Receiver.

David H. Kraft,
David H. Kraft,
Attorney for Maurice M. Kraft.

Loucks & Hennings, (M. Foss)
Loucks & Hennings,
Attorneys for Stephen L. Ingersoll, as Agent for Cordelia L. Ingersoll, as Executrix of the Estate of Stephen A. Ingersoll, Deceased.

Cassels, Potter & Bentley,
Cassels, Potter & Bentley,
Attorneys for Edla and Emil W. Christiansen.

R. W. Proctor (M. Foss),
R. W. Proctor,
Attorney for G. R. Curnock.

Lee Walker by H. S. W.,
Lee Walker,
Attorney for Reconstruction Finance Corporation.

Dent, Weichelt & Hampton,
Dent, Weichelt & Hampton,
Attorneys for Indemnity Insurance Company of North America.

Leo L. Donahoe (E. Stahl),
Leo L. Donahoe,
Attorney for E. W. Wenstrand.

Mayer, Meyer, Austrian & Platt,
Mayer, Meyer, Austrian & Platt,
Attorneys for Continental Illinois National Bank and Trust Company of Chicago.

William J. Flaherty,
William J. Flaherty,
Attorney for Charles H. Albers, Receiver.

Chapman and Cutler,
Chapman and Cutler,
Attorneys for Harris Trust and Savings Bank.

David H. Greenberg,
David H. Greenberg,
Attorney for I. Gordon, J. Rose, Sam Harris and M. Bernard Greenberg.

Weightstill Woods,
Treasurer of Granada Apartments Hotel Corporation.

State of Illinois }
County of Cook } ss.

Paul Murray, being first duly sworn, on oath deposes and says that on the 5th day of July, 1939, at the hour of 3:45 P. M., he served the above and foregoing citation upon the within named Granada Apartments Hotel Corporation by delivering and leaving a true and correct copy of said citation with Weightstill Woods, Treasurer of said Granada Apartments Hotel Corporation, at the office of said Weightstill Woods and of said Granada Apartments Hotel Corporation, at 77 West Washington Street, Chicago, Illinois.

Paul Murray.

Subscribed and sworn to before me this 7th day of July, A. D. 1939.

Ruth Burns,
Notary Public.

(Seal)

Endorsed: United States Circuit Court of Appeals. * * (Caption—6986) * * Citation. U. S. C. C. A.—7. Filed Jul 11 1939 Frederick G. Campbell Clerk.

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UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 421 to 837, inclusive, contain a true copy of volume II of the printed record printed under my supervision and filed on the fifteenth day of November, 1939, in the following entitled causes:

Causes Nos. 6986, 7060.

In the Matter of Granada Apartments, Inc., Debtor.

City National Bank and Trust Company of Chicago, etc., *et al.*,

Appellants,

vs.

Weightstill Woods, Court Trustee, *et al.*,

Appellees,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 23rd day of July, A. D. 1940.

Kenneth J. Carrick,

(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

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179

CLERK'S COPY.

402 909
Sup. Ct.

Vol. III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 281

WEIGHTSTILL WOODS, COURT TRUSTEE,
PETITIONER,

vs.

CITY NATIONAL BANK AND TRUST CO., OF
CHICAGO, ET AL.

No. 282

WEIGHTSTILL WOODS, COURT TRUSTEE,
PETITIONER,

vs.

CITY NATIONAL BANK AND TRUST CO., OF
CHICAGO, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 25, 1940.

CERTIORARI GRANTED ~~JULY 22, 1940.~~

OCT 14 1940

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No.....

IN THE MATTER OF GRANADA APARTMENTS, INC., A CORPORATION, DEBTOR.

WEIGHTSTILL WOODS, COURT TRUSTEE, ET AL.,
Petitioners,

vs.

CITY NATIONAL BANK & TRUST COMPANY OF CHICAGO, ETC., ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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INDEX.

Index to printed record of proceedings in U. S. District Court i

Clerk's certificate to Volume I of printed record of proceedings in U. S. District Court.....420A

Clerk's certificate to Volume II of printed record of proceedings in U. S. District Court..... 839

Index to proceedings in U. S. Court of Appeals:

- Placita 841
- Petition for leave to appeal, No. 6986..... 842
- References to pages of printed record which contain Exhibits, A, B, C, D, E, and F, attached to petition for leave to Appeal..... 851
- Reference to pages of printed record, which contain Assignment of Errors, cause No. 6986..... 852
- Appearance for appellants, No. 6986..... 853
- Answer to Petition for leave to appeal, No. 6986. 853
- Reference to pages of printed record which contain order of Court of Appeals allowing appeal, No. 6986 .....853A
- Order of July 1, 1939, approving appeal bond, No. 6986 854
- Appeal bond, No. 6986 855
- Reference of printed record which contain citation, No. 6986 860
- Excerpts from short record filed on July 19, 1939, No. 6986 860
  - References to pages of printed record which contain order of June 20, 1939 and order or decree of May 2, 1939 860
- Praecipe for record filed June 29, 1939..... 861

Praecipe for short record filed on July 18, 1939 868
Certificate of Clerk 870
Motion for order extending time for filing transcript of record, No. 6986 870
Order of July 21, 1939, extending time for filing transcript of record, No. 6986..... 873
Appearance for Court Trustee, No. 7060 874
Appearance for appellant, No. 7060 875
Motion of appellants to consolidate appeals 6986-7060, etc. 876
Exhibit A—List of documents to be printed in consolidated transcript of record 880
Counter-motion of Court Trustee to dismiss appeal 6986 and answer and objections to the appeal and all motions and petitions by the appellants. 886
Suggestions and authorities in support of counter-motion 890
Motion by Court Trustee that certain appellants be dismissed out of the proceedings, etc., No. 7060 893
Suggestion in Support of motion 894
Answer of appellants to Court Trustee's motion to dismiss appeal, No. 6986 896
Answer and counter-suggestions of appellant to motion by Court Trustee to dismiss appeal as to certain appellants, No. 7060 901
Exhibit A—Order of District Court entered Oct. 22, 1937 905
Exhibit B—Order of District Court entered Oct. 21, 1937 911
Reply by Court Trustee to counter-suggestions by appellants; and confirmation by Court Trustee of his motion to dismiss appeal No. 6986..... 913

Reply by Court Trustee to answer and counter-suggestions by appellant; and confirmation by Court Trustee of his motion to dismiss appeal No. 7060 as to certain appellants 916

Order of Oct. 4, 1939, denying counter-motion of Weightstill Woods, as Court Trustee, to dismiss appeal No. 6986 918

Order of Oct. 4, 1939, denying motion of Weightstill Woods, as Court Trustee, to dismiss certain appellants out of the proceedings, without prejudice, etc., No. 7060 919

Order of Oct. 4, 1939, consolidating appeals No. 6986-7060, etc. 920

Renewal of counter-motion to dismiss appeal No. 6986 and answer to motion for consolidation filed by Weightstill Woods, Court Trustee, No. 6986. 923

Renewal of motion that certain appellants be dismissed out of the proceedings, No. 7060..... 939

Answer and response of City National Bank, etc., et al., to Court Trustee's renewal motion, No. 6986 943

Order of Nov. 27, 1939, denying renewed motion to dismiss appeal No. 6986 and denying renewed motions to dismiss appeal No. 7060, as to certain appellants, etc. 953

Hearing and submission of appeals 6986-7060, Feb. 23, 1940 954

Opinion by Major, J., filed March 26, 1940, Nos. 6986-7060, 7061, 7186 and 7086 955

Order or decree, No. 6986, entered Mar. 26, 1940.. 970

Order or decree, No. 7060, entered Mar. 26, 1940.. 971

Petition for rehearing filed April 10, 1940, Nos. 6986, 7060 and 7061 973

Motion by Court Trustee that if rehearing is granted, he be granted leave to file a summary of evidence, Nos. 6986, 7060 and 7061..... 991
Suggestions to support motion 992
Answer to petitions for rehearing, Nos. 6986-7060, 7061, 7186 and 7086 996
Order of May 7, 1940, denying for petition for rehearing, Nos. 6986, 7060 and 7061..... 999
Notice, proof of service and motions by Court Trustee to stay mandates, Nos. 6986, 7060 and 7061 1000
Suggestions by Court Trustee.....1002
Order of May 16, 1940, staying mandates and directing Clerk to transmit to Supreme Court the records sent to this Court by a special order, Nos. 6986, 7060 and 7061 1003
Notice, proof of service and motion by Court Trustee to stay mandates an additional forty days..1004
Suggestions by Court Trustee 1005
Order of June 15, staying mandates additional forty days, Nos. 6986, 7060, 7061, and 7086.....1006
Motions to dismiss appeals for want of jurisdistion; and motions to retax costs filed by Weightstill Woods, Court Trustee, Nos. 6986 and 7060.1007
Answer of appellants to renewed motions of Weightstill Woods, appellee, to dismiss appeals, etc. 1025
Order of July 3, 1940, denying motions of Weightstill Woods, Court Trustee, to dismiss appeals and retax costs 1033
Praecipe for record filed July 15, 1940.....1034
Clerk's certificate 1037

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the fourth day of our Lord one thousand nine hundred and thirty-eight, and of our Independence the one hundred and sixty-third.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank & Trust Company of Chicago, etc., *et al.*,
Appellants,
6986 *vs.*
Weightstill Woods, Court Trustee, *et al.*,
Appellees.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank & Trust Company of Chicago, etc., *et al.*,
Appellants,
7060 *vs.*
Weightstill Woods, Court Trustee, *et al.*,
Appellees.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

And on, to-wit: On the eleventh day of June, 1939, there was filed in the office of the Clerk of this Court, in cause No. 6986, a petition for leave to appeal which said petition for leave to appeal is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit,

No. 6986.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank and Trust Company of Chicago, individually and as Successor Trustee, etc., *et al.*,
Appellants,
vs.
Weightstill Woods, Court Trustee, Granada Apartments, Inc., a corporation, Granada Apartments Hotel Corporation, a corporation, Florence Newman, Edwin Rosenberg, Charles Cunningham, as Receiver, Maurice M. Kraft, Stephen L. Ingersoll, as Agent for Cordelia L. Ingersoll, as Executrix of the Estate of Stephen A. Ingersoll, Deceased, Edla Christiansen, Emil W. Christiansen, G. R. Curnock, Reconstruction Finance Corporation, a corporation, Indemnity Insurance Company of North America, a corporation, E. W. Wenstrand, Continental Illinois National Bank and Trust Company of Chicago, a corporation, Charles H. Albers, as Receiver, Harris Trust and Savings Bank, a corporation, I. Gordon, J. Rose, Sam Harris, M. Bernard Greenberg,
Appellees.

Petition for appeal from order entered in Case No. 65811 in the District Court of the United States for the Northern District of Illinois, Eastern Division, denying fees and expenses to Bondholders Protective Committee, Trustee under First Mortgage Indenture and to Defrees, Buckingham, Jones & Hoffman, as their attorneys, and sustaining and allowing counterclaim by Weightstill Woods, as Court Trustee.
Honorable
John P. Barnes,
Judge Presiding.

PETITION FOR LEAVE TO APPEAL.

To the Honorable Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Petitioners, City National Bank and Trust Company of Chicago, individually and as Successor Trustee under trust indenture securing Granada Apartments First Mortgage Bonds, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee acting under Deposit Agreement for the holders of said bonds, and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Bucking-

ham, Jones & Hoffman, respectfully pray leave to appeal from an order entered in the United States District Court for the Northern District of Illinois, Eastern Division, by the Honorable John P. Barnes, one of the judges thereof, on the 2nd day of May, 1939, wholly disallowing and dismissing for want of equity paragraphs 5 and thereafter of Claim No. 9 of said City National Bank and Trust Company of Chicago against Debtor, and disallowing and dismissing for want of equity all petitions and claims for expenses and allowances by said City National Bank and Trust Company of Chicago, Bondholders Committee and their attorneys, Petitioners herein.

Appeal from the order complained of has been perfected by filing with the Clerk of the United States District Court on June 1st, 1939, a notice of appeal. Petitioners had believed from a reading of the Bankruptcy Act, as amended, that an appeal from any order entered in a bankruptcy proceeding, including an order making or refusing to make fee allowances, should be taken as of right under Section 24(a), except when less than Five Hundred Dollars ($500.00) was involved. Petitioners were convinced that their construction of the Act was correct when they read the decision of the Circuit Court of Appeals for the Second Circuit in the case of *London* v. *O'Dougherty,* 102 Fed. (2d), 524, rendered March 13, 1939, specifically holding that under the Bankruptcy Act as amended appeals, even from fee allowances, were to be taken as of right under Section 24(a). It was not until June 8th that Petitioners discovered that the Circuit Court of Appeals for this Circuit in the case of *In re Albert Dickinson & Company, Inc.,* decided May 22, 1939 and reported in Commerce Clearing House Bankruptcy Law Service June 6, 1939, had held that an appeal from a fee allowance under the Chandler Act must be by petition for leave to appeal.

As the order from which appeal is prayed in this petition was entered May 2, 1939, and as written notice of the entry of the order was not given to the aggrieved party, as provided in Section 25 of the Chandler Act, Petitioners had forty days from the entry of the order within which to file a petition for leave to appeal, that is, until June 12.

A great many questions are raised by the appeal. In fact, due to the number of petitions, claims and counterclaims presented which were all consolidated for hearing

and determined by the one order, this is, in effect, seven or eight appeals rolled into one. The transcript of the proceedings alone is some 2200 pages in length.

Under the circumstances, the court can readily see that it has been a difficult task to prepare a petition, assignment of errors and brief which adequately present all the questions involved. However, as the matter will be fully presented by the appeal which has already been perfected by filing notice of appeal in the District Court and as the petition for leave to appeal is now presented to this court merely for the purpose of conforming to the technical requirements of the Act as interpreted by this court, we submit that the petition should be allowed in order that all the matters presented, including the question of fee allowances, may be properly heard and determined when the full record is before the court.

Summary of Facts.

Petitioners represent that the following is a summary statement of the facts upon which the order complained of was entered:

Involuntary proceedings for corporate reorganization of Granada Apartments, Inc., under Section 77B instituted at Danville, Illinois, were transferred to Chicago and consolidated with voluntary proceedings there pending.

By order entered May 17, 1937, motions for the approval of the petitions were allowed and Weightstill Woods was appointed temporary Trustee. The appointment was never made permanent, but he was continued as temporary Trustee by court orders entered from time to time.

Principal property of the Debtor is a five-story furnished apartment hotel at 525 Arlington Place, Chicago, Illinois, containing kitchennette apartments and is encumbered by a first mortgage trust deed securing outstanding unsubordinated bonds in the principal sum of $485,500 and subordinated bonds in the principal amount of $25,000.

Petitioner, City National Bank and Trust Company of Chicago, was and is the Successor Trustee under the First Mortgage Trust Deed, and Petitioners, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer are members of the Protective Committee for the protection of holders of First Mortgage Bonds acting under Deposit Agreement dated April 25, 1933, which at the time of the confirmation of the Plan hereinafter mentioned had on

deposit almost two-thirds of the outstanding unsubordinated bonds. Petitioners, George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman, were and are the attorneys for Petitioner, City National Bank and Trust Company of Chicago, as Successor Trustee aforesaid, and for members of the Bondholders Committee aforesaid.

On August 7, 1933, Central Republic Trust Company, the then Trustee under the First Mortgage Indenture, filed a cross-bill in the Superior Court of Cook County, Illinois, to foreclose the first mortgage trust deed. Thereafter, on March 22, 1934, Central Republic Trust Company took possession of the property and operated it as Trustee in possession until January 3, 1935, on which date the City National Bank and Trust Company of Chicago, one of the Petitioners herein, as Successor Trustee under the trust indenture, by appointment of the State Court in the foreclosure proceeding, took possession of the said property and operated it as Trustee in possession. Receiver of Central Republic Trust Company presented to the State Court its final report and account covering its operation of said property, which was approved, and the Central Republic Trust Company and its Receiver, after paying the balance on hand to the City National Bank and Trust Company of Chicago, as Successor Trustee, were forever discharged from any and all liability under and in connection with said trust indenture and the administration of said trust.

Thereafter City National Bank and Trust Company of Chicago, as the Successor Trustee, accounted to the defendants in the State Court foreclosure proceeding for all rents, issues, income and profits collected and disbursed by it as Trustee in possession for the period from January 3, 1935 to September 30, 1936, and the balance on hand in the amount of One Thousand Six Hundred Eight Dollars and Fifty-six Cents ($1,608.56), as shown by said accounting, was applied by the decree of sale entered in said cause on the indebtedness found due City National Bank and Trust Company, as Trustee aforesaid. The debtor and the First Mortgage Bondholders were parties to the State Court proceeding and raised no objections to the accounting.

Thereafter, City National Bank and Trust Company of

Chicago continued to operate the said property as Trustee in possession until it surrendered possession thereof to the Court Trustee in the bankruptcy proceeding on May 20, 1937 immediately upon his qualifying.

Thereafter City National Bank and Trust Company of Chicago filed its Claim No. 9 based on the decree of sale which was entered in the State Court foreclosure proceeding more than four (4) months before the filing of the petitions in bankruptcy. The claim so filed was for its expenses for court reporter's and stenographer's fees in the State Court foreclosure proceeding in the amount of Thirty-nine Dollars and Ninety Cents ($39.90) and for its Trustee's fees and those of its counsel allowed in and by the said decree as a lien on the property prior to the lien of the bondholders in the respective amounts of Two Thousand Five Hundred Sixty Dollars ($2,560) and Eight Thousand Two Hundred Fifty Dollars ($8,250), the latter amount being the amount allowed in said decree for services of the Trustee's solicitors rendered to the date of the entry of the foreclosure decree and it did not include compensation for any services that were to be rendered by said attorneys subsequent to the entry of said decree.

Subsequently such proceedings were had that the Plan of Reorganization formulated and presented by the Committee was confirmed on July 14, 1937. Under the Plan a new corporation was to be formed, all of the stock of which was to be trusteed with three stock trustees, the Court subsequently appointing Weightstill Woods, Clarence Boord and William Haight.

On August 30, 1937 City National Bank and Trust Company of Chicago filed its report and account in the 77B proceedings covering, among other things, its operation as Trustee in possession of the property for the period from September 30, 1936 to May 20, 1937, a copy of which said report and account is attached to this petition marked "Exhibit A" and made a part hereof.

On September 9, 1937, Weightstill Woods, Federal Trustee, filed to the report and account of the City National Bank and Trust Company and to its Claim No. 9 what he designated as "Answer and Counter Claim by Federal Trustee to Petition Filed August 30, 1937 by City National Bank and Trust Company for Approval of Accounts; and Objections by Federal Trustee to Claims by City National and its Counsel for Fees and Expenses in Superior Court and in this Court." A copy of the so-called Answer and

Counter Claim is hereto attached marked "Exhibit B" and made a part of this petition by reference.

On September 14, 1937 the petition for fees and expenses of the Bondholders Committee was filed, detailing the services of the Committee in connection with the 77B proceedings and the Plan of Reorganization and asking for an allowance of such amounts as the Court might find reasonable for the payment of expenses incurred by the Committee and City National Bank and Trust Company for services rendered and personnel and facilities furnished Committee, and for services rendered as Depositary and for reimbursement of "out-of-pocket" expenses as shown by an exhibit attached to the said petition. The petition requested reasonable compensation, but specified no definite amount, but on the hearing before the Special Master to whom the petition was referred to take the evidence, a fee of Three Thousand Two Hundred Dollars ($3,200) was requested for Depositary services, Ten Thousand Dollars ($10,000) was requested for services to reimburse City National Bank and Trust Company for furnishing facilities and personnel and Two Thousand Three Hundred Eighty-five Dollars and Twenty-one Cents ($2,385.21) was requested for reimbursement for "out-of-pocket" expenses.

On the same date, September 14, 1937, Defrees, Buckingham, Jones & Hoffman filed their petition for allowance to them of fees as counsel for the Bondholders Committee. The petition detailed services which they had performed for the Committee in connection with the 77B proceedings and the Plan and services to be rendered in connection therewith and asked for reasonable compensation therefor but specified no definite amount.

At the hearing on the fee petition of counsel before the Special Master, Mr. O'Brien stated that in his opinion reasonable compensation for all legal services rendered as counsel for the Indenture Trustee in the State Court proceeding and as counsel for the Indenture Trustee in the Bankruptcy proceedings and as counsel for the Committee would be not less than a total of Thirty Thousand Dollars ($30,000), which amount would include the Eight Thousand Five Hundred Dollars ($8,500) allowed by the decree in the State Court proceeding for services there rendered and set forth in Claim No. 9 filed by the Indenture Trustee in the Bankruptcy proceeding. He further stated that his firm was willing to waive its right to stand on the claim and submit the whole matter of its fees *de novo* to the Court. He also stated that the request of Thirty

Thousand Dollars ($30,000) should be reduced by the sum of Five Thousand Five Hundred Dollars ($5,500) which constituted payments theretofore made to his firm for other legal services rendered in other matters in connection with the Granada property.

On September 18, 1937 the answer of City National Bank and Trust Company, as Trustee, was filed to the counterclaim of Weightstill Woods, as Trustee in Bankruptcy. A copy of the answer is hereto annexed marked "Exhibit C" and made a part of this petition.

Hearings on the report and account of City National Bank and Trust Company, as Trustee, the answer, counterclaim and objections of the Court Trustee thereto and the answer of City National Bank and Trust Company, as Trustee, to the said counterclaim extended over a period of approximately a month and on October 12, 1937 the Court entered an order taking the matter under advisement and granting leave to the Court Trustee and to the City National Bank and Trust Company, as Trustee, to file briefs and submit findings of fact and conclusions of law within fifteen (15) days and thirty (30) days, respectively.

Thereafter on October 21, 1937 an order was entered on the motion of the Court Trustee ordering the petitions for allowance of fees and expenses to the Bondholders Committee and to Defrees, Buckingham, Jones & Hoffman to be consolidated with the accounting proceedings hereinbefore mentioned, and further directing that all evidence that had been taken before the Special Master on said petitions should be considered as a part of the hearing which had been had before the Court in connection with said accounting proceedings.

Thereafter the Court Trustee presented to the Court his proposed findings of fact and conclusions of law, to which City National Bank and Trust Company of Chicago, the Protective Committee and Defrees, Buckingham, Jones & Hoffman presented to the Court and filed suggestions and objections and their proposed findings of fact and conclusions of law.

On July 14, 1938 Judge Barnes rendered an oral opinion, a copy of which is hereto attached marked "Exhibit D" and made a part of this petition, and directed the Court Trustee to prepare and on notice present findings of fact and conclusions of law in accordance with his oral opinion and a decree consistent therewith.

On May 2, 1939 the Court made, approved and filed of

record the findings of fact and conclusions of law so presented by the Court Trustee and entered the order from which this appeal is prayed. A copy of said findings and of said order are hereto attached marked respectively Exhibits "E" and "F" and made a part of this petition.

Wherefore, your Petitioners pray that they may be allowed to appeal from the said order of May 2, 1939, to this Honorable Court and that citations be issued directed to the said Weightstill Woods, Court Trustee, Granada Apartments, Inc., a corporation, Granada Apartments Hotel Corporation, a corporation, Florence Newman, Edwin Rosenberg, Charles Cunningham, as Receiver, Maurice M. Kraft, Stephen L. Ingersoll, as Agent for Cordelia L. Ingersoll, as Executrix of the Estate of Stephen A. Ingersoll, Deceased, Edla Christiansen, Emil W. Christiansen, G. R. Curnock, Reconstruction Finance Corporation, a corporation, Indemnity Insurance Company of North America, a corporation, E. W. Wenstrand, Continental Illinois National Bank and Trust Company of Chicago, a corporation, Charles H. Albers, as Receiver, Harris Trust and Savings Bank, a corporation, I. Gordon, J. Rose, Sam Harris and M. Bernard Greenberg, commanding them to appear before the said United States Circuit Court of Appeals for the Seventh Circuit to do and receive what may appertain to justice in the premises and that a transcript of the record of proceedings in said case on which said order was entered, duly authenticated, may be transmitted to the United States Circuit Court of Appeals for the Seventh Circuit.

And Petitioners will ever pray, etc.

City National Bank and Trust Company of Chicago, as Successor Trustee,
By Arthur T. Leonard,
Its Vice President.

Albert J. Peterson, Lewis W. Riddle, W. G. Sturm and E. A. Kilmer, Members of the Protective Committee, as aforesaid,
By W. G. Sturm,
Member of said Committee and its duly authorized agent in this behalf.

George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, copartners doing business as Defrees, Buckingham, Jones & Hoffman,
By Vincent O'Brien,
A Partner.

State of Illinois }
County of Cook } ss.

Arthur T. Leonard, being first duly sworn, on oath deposes and says that he is a Vice President of City National Bank and Trust Company of Chicago, one of the Petitioners herein, and its duly authorized agent in this behalf, that he has read the above and foregoing petition subscribed by the said City National Bank and Trust Company of Chicago, knows the contents thereof and that the same is true in substance and in fact.

Arthur T. Leonard.

Subscribed and sworn to before me this 12th day of June, A. D. 1939.

Berthel W. Peterson,
Notary Public.

(Seal)

State of Illinois }
County of Cook } ss.

W. G. Sturm, being first duly sworn, on oath deposes and says that he is a member of the Bondholders Committee, one of the Petitioners herein, and the duly authorized agent in this behalf, that he has read the above and foregoing petition by him on their behalf subscribed, knows the contents thereof and that the same is true in substance and in fact.

W. G. Sturm.

Subscribed and sworn to before me this 12th day of June, A. D. 1939.

Berthel W. Peterson,
Notary Public.

(Seal)

State of Illinois }
County of Cook } ss.

Vincent O'Brien, being first duly sworn, on oath deposes and says that he is a member of the partnership of Defrees, Buckingham, Jones & Hoffman and their duly authorized agent in this behalf, that he has read the above and foregoing petition by him on their behalf subscribed, knows the contents thereof and that the same is true in substance and in fact.

Vincent O'Brien,

Subscribed and sworn to before me this 12th day of June, A. D. 1939.

Ruth Burns,
Notary Public.

(Seal)

Endorsed: Filed June 12, 1939. Frederick G. Campbell, Clerk.

(Attached to said petition for leave to appeal is Exhibit A, being Report and Account of City National Bank and Trust Company of Chicago, As Trustee, which said Report and Account is not copied here as the same appears on pages 111 to 126 inclusive, of the printed record in this cause certified herewith under a separate certificate.)

(Also attached to said petition for leave to appeal is Exhibit B, being Answer and counterclaim by Federal Trustee to petition of City National Bank & Trust Co. for approval of accounts, etc., and Suggestions (objections) by Federal Trustee to surcharge and falsify accounts and deny all claim by City National Bank & Trust Co., its Committee and their counsel and petition by Federal Trustee for general relief against respondent, which are not copied here as the same appear on pages 126 to 139 inclusive of the printed record in this cause certified herewith under a separate certificate.)

(Also attached to said petition for leave to appeal is Exhibit C, being Answer of City National Bank and Trust Company of Chicago, as Trustee, to the Counterclaim of Weightstill Woods, Trustee in Bankruptcy, which is not copied here as the same appears on pages 165 to 169 inclusive of the printed record in this cause certified herewith under a separate certificate.)

(Also attached to said petition for leave to appeal is Exhibit D, being decision rendered July 14, 1938, by Judge John P. Barnes, which is not copied here as the same appears on pages 761 to 768 inclusive of the printed record in this cause certified herewith under a separate certificate.)

(Also attached to said petition for leave to appeal is Exhibit E, being Findings of Fact and Conclusions of Law after full hearings in Open Court which is not copied here as the same appears on pages 769 to 793 inclusive of the printed record in this cause certified herewith under a separate certificate.)

(Also attached to said petition for leave to appeal is Exhibit F, being Decree entered May 2, 1939, which is not copied here as the same appears on pages 794 and 795 of the printed record in this cause certified herewith under a separate certificate.)

And on the same day, to-wit: On the twelfth day of June, 1939, there was filed in the office of the Clerk of this Court, in cause No. 6986, the assignment of errors, which are not copied here as the same appear on pages 817 to 831 inclusive in the printed record in this cause certified herewith under a separate certificate.

And on the same day, to-wit: On the twelfth day of June, 1939, there was filed in the office of the Clerk of this Court, in cause No. 6986, an appearance for appellant, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 6986. October Term, 19.....

City National Bank and Trust Company of Chicago, individually and as Successor Trustee, etc, *et al.*,

vs.

Weightstill Woods, Court Trustee, *et al.*

The Clerk will enter my appearance as counsel for the Appellants.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
105 S. La Salle Street,
Chicago, Illinois.

Endorsed: Filed June 12, 1939. Frederick G. Campbell, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of
Granada Apartments, Inc.,
Debtor. } No. 6986.

ANSWER TO PETITION BY CITY NATIONAL BANK AND TRUST COMPANY AND OTHERS, FILED IN THIS COURT JUNE 12, FOR THIS COURT TO ALLOW AN APPEAL.

Weightstill Woods as Court Trustee in these proceedings, shows that on June 1, 1939, all of said petitioners City National Bank and Trust Company and others, filed their notice of appeal in the District Court, and on June 8 filed designation of points and praecipe for record in said Court, for an appeal to this Court, in this same matter, and from the same decree dated May 2, 1939, appearing by the same attorneys.

(1) It follows that all power to take an appeal was exercised and exhausted by said petitioners before their application was filed in this Court.

(2) Also the forty days allowed by statute had expired on June 11, 1939, before petition was filed in this court,

(3) Also this application is duplication, vexation, surplusage and tends to encumber and confuse the record.

(4) Also there seems to be now no power by rule or statute for this Court to grant such an appeal.

Wherefore your Court Trustee requests that the prayer of said petition filed here June 12, 1939, by City National Bank and Trust Company and others, to this Court for an appeal be denied.

Respectfully submitted,
Weightstill Woods as Court Trustee.

Weightstill Woods being sworn states that he has prepared the foregoing answer, that he knows the contents thereof to be a true statement of the records made in the District Court at Chicago, and that the facts stated in said answer are true.

Weightstill Woods.
Weightstill Woods.

Subscribed and sworn to before me this June 17, 1939.
Edwin D. Lasker,
(Seal) *Notary Public.*

Received copy of foregoing answer June 17, 1939.
Mort D. and Frank Goldberg,
11 South La Salle Street,
By Frank Goldberg.

Vincent O'Brien and Associates,
105 South La Salle Street,
By Vincent O'Brien and Associates,
W. S.

Endorsed: Filed June 17, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the twenty-second day of June, 1939, an order allowing appeal was entered in cause No. 6986, which said order is not copied here as the same appears on page 832 of the printed record in this cause certified herewith under a separate certificate.

And afterwards, to-wit: On the first day of July, 1939, the following further proceedings were had and entered of record, to-wit:

Saturday, July 1, 1939.

Court met pursuant to adjournment.

Before:

Hon. J. Earl Major, Circuit Judge.

In the Matter of:
Granada Apartments, Inc.,
Debtor.

City National Bank & Trust Company of Chicago, etc., *et al.*,
Appellants,
6986 *vs.*
Weightstill Woods, Court Trustee, *et al.*,
Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered that the appeal bond filed this day in this cause be, and it is hereby, approved.

And on the same day, to-wit: On the first day of July, 1939, there was filed in the office of the Clerk of this Court an appeal bond, which said appeal bond is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of Granada Apartments, Inc., a corporation, Debtor.	
City National Bank and Trust Company of Chicago, individually and as Successor Trustee, etc., *et al.* *Appellants,* *vs.* Weightstill Woods, Court Trustee, *et al.,* *Appellees.*	No. 6986.

APPEAL BOND.

Know All Men by These Presents, that we, City National Bank and Trust Company of Chicago, individually and as Successor Trustee under Indenture securing Granada Apartments First Mortgage Bonds, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933 with respect to said Bonds, George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman, as principals, and Aetna Casualty & Surety Company, a corporation, as surety, are firmly bound unto Weightstill Woods, Court Trustee, Granada Apartments, Inc., a corporation, Granada Apartments Hotel Corporation, a corporation, Florence Newman, Edwin Rosenberg, Charles Cunningham, as Receiver, Maurice M. Kraft, Stephen L. Ingersoll, as Agent for Cordelia L. Ingersoll, as Executrix of the Estate of Stephen A. Ingersoll, Deceased, Edla Christiansen, Emil W. Christiansen, G. R. Curnock, Reconstruction Finance Corporation, a corporation, Indemnity Insurance Company of North

America, a corporation, E. W. Wenstrand, Continental Illinois National Bank and Trust Company of Chicago, a corporation, Charles H. Albers, as Receiver, Harris Trust and Savings Bank, a corporation, I. Gordon, J. Rose, Sam Harris and M. Bernard Greenberg, in the amount of Two Hundred Fifty Dollars ($250) for the payment of which well and truly to be made we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Signed with our seals and dated this 30th day of June, A. D. 1939.

Whereas, an order was entered in the above entitled proceedings in the United States Circuit Court of Appeals for the Seventh Circuit on the 22nd day of June, 1939, allowing an appeal to said United States Circuit Court of Appeals for the Seventh Circuit from a certain order entered May 2, 1939 in the District Court of the United States for the Northern District of Illinois, Eastern Division, against the said City National Bank and Trust Company of Chicago, individually and as Successor Trustee under Indenture securing Granada Apartments First Mortgage Bonds, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933, with respect to said Bonds, and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman; and

Whereas, in said order allowing said appeal it was required that Appellants give a bond on appeal in the sum of Two Hundred Fifty Dollars ($250),

Now, Therefore, the condition of this obligation is such that if the above named persons shall prosecute their appeal to effect and answer all costs awarded if they fail to make the said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

City National Bank and Trust Company of Chicago, Individually and as Successor Trustee under Indenture securing Granada Apartments First Mortgage Bonds,
By Arthur T. Leonard,
Vice President.

Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer,
Members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933 with respect to said bonds,
By W. Sturm,
Hereunto duly authorized.

Defrees, Buckingham, Jones & Hoffman,
By Matthew Mills,
A Partner.

Aetna Casualty and Surety Company, a corporation,
By Joseph I. Johnson,
Joseph I. Johnson.
Agent and Attorney-in-fact.

(Seal)
Approved:
J. Earl Major,
Judge.

State of Illinois }
County of Cook } ss.

I, E. B. Rechtoris, a Notary Public in and for said County and State, do hereby certify that * * * Resident Vice-President, and * * * Resident Assistant Secretary, Joseph I. Johnson, Attorney in fact, of The Aetna Casualty and Surety Company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered said instrument, for and on behalf of The Aetna Casualty and Surety Company, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 30th day of June, A. D. 1939.

E. B. Rechtoris,
Notary Public.

(Seal)

My Commission Expires March 17th, 1940.

The Aetna Casualty and Surety Company
Hartford, Connecticut.

Certificate of Authority of Attorney(s)-in-Fact.

Know All Men by these Presents, That the Aetna Casualty and Surety Company, a corporation duly organized under the laws of the State of Connecticut, and having its principal office in the City of Hartford, County of Hartford, State of Connecticut, hath made, constituted and appointed, and does by these presents make, constitute and appoint Joseph I. Johnson of Chicago, Illinois, its true and lawful Attorney(s), with full power and authority hereby conferred to sign, execute and acknowledge, for The Aetna Casualty and Surety Company, as surety, by his sole signature and act any and all bonds, undertakings and other writings obligatory in the nature of a bond, and to bind The Aetna Casualty and Surety Company thereby as fully and to the same extent as if the same were signed by the duly authorized officers of The Aetna Casualty and Surety Company, and all the acts of said Attorney(s), pursuant to the authority herein given, are hereby ratified and confirmed.

This appointment is made under and by authority of the following provisions of the by-laws of the Company which provisions are now in full force and effect and are the only applicable provisions of said by-laws.

Article 4.

Section 8. The President, any Vice-President, or any Secretary may from time to time appoint Resident Vice-Presidents, Resident Assistant Secretaries, Attorneys-in-Fact, and Agents to act for and on behalf of the Company and may give any such appointee such authority as his certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors may at any time remove any such appointee and revoke the power and authority given him.

Section 10. Any bond, recognizance, contract of in-

demnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President or a Vice-President or by a Resident Vice-President, pursuant to the power prescribed in the certificate of authority of such Resident Vice-resident, and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary or by a Resident Assistant Secretary, pursuant to the power prescribed in the certificate of authority of such Resident Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact pursuant to the power prescribed in his or their certificate or certificates of authority.

In Witness Whereof, The Aetna Casualty and Surety Company has caused these presents to be signed by its Secretary, and its corporate seal to be hereunto affixed, this 30th day of June, A. D. 1939.

The Aetna Casualty and Surety Company,
By A. B. Palmerton,
Secretary.

(Seal)

State of Connecticut, } ss:
County of Hartford, }

On this 30th day of June, A. D. 1939, before me personally came A. B. Palmerton, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Hartford, State of Connecticut; that he is Secretary of The Aetna Casualty and Surety Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of his office under the by-laws of said corporation and that he signed his name thereto by like authority.

Certificate No. 186401.

N. M. Potter,
Notary Public.

(Seal)

My Commission Expires Jan. 31, 1941.

Endorsed: Filed July 1, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the eleventh day of July, 1939, there was filed in the office of the Clerk of this Court a citation, in cause No. 6986, which said citation is not copied here as the same appears on pages 834 to 837 inclusive of the printed record in this cause certified herewith under a separate certificate.

And afterwards, to-wit: On the nineteenth day of July, 1939, there was filed in the office of the Clerk of this Court, in cause No. 6986, a short record, which said short record consists of an order of June 20, 1939, continuing cause for entry of decree, which said order is not copied here as the same appears on page 815 of the printed record of causes No. 6986 and No. 7060, the order or decree entered May 2, 1939, which is not copied here as the same appears on pages 794 and 795 of the printed in causes No. 6986 and No. 7060, and of a praecipe for record filed on June 29, 1939, and a praecipe for short record filed on July 18, 1939, and a certificate of Clerk of District Court, which are as follows:

IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

In the Matter of Granada Apartments, Inc., a corporation, *Debtor.*	
City National Bank and Trust Company of Chicago, individually and as Successor Trustee, etc., et al., *Appellants,* *vs.* Weightstill Woods, Court Trustee, et al., *Appellees.*	In Proceedings for the Reorganization of a Corporation. No. 65811.

PRAECIPE FOR RECORD.

To the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division:

You Are Hereby Requested to make a transcript of the record of the proceedings had in the District Court of the United States for the Northern District of Illinois, Eastern Division, in the above entitled cause, to be filed in the United States Circuit Court of Appeals for the Seventh Circuit pursuant to appeal heretofore allowed on June 22, 1939, by the United States Circuit Court of Appeals for the Seventh Circuit, and to include in such transcript of record the following, to wit:

1. Placita.
2. Involuntary petition of creditors against Granada Apartments, Inc. filed April 19, 1937 at Danville, Illinois, in cause their No. 3008-D and later here numbered 65957.
3. Answer of Debtor to involuntary petition filed at Danville, Illinois, in cause their No. 3008-D.
4. Voluntary petition of Granada Apartments, Inc. filed April 23, 1937 at Chicago, Illinois.
5. Finding and order of court on creditors' petition and motion to intervene filed at Danville, Illinois, in cause their No. 3008-D.
6. Order entered May 11, 1937 approving voluntary

and involuntary petitions as properly filed and consolidating voluntary and involuntary petitions and appointing temporary Trustee.

7. Special and limited appearance of City National Bank and Trust Company of Chicago, as Successor Trustee, filed May 17, 1937.

8. Petition of City National Bank and Trust Company of Chicago filed May 17, 1937 pursuant to special and limited appearance.

9. Subpoena and return filed May 19, 1937.

10. Order entered May 20, 1937 approving bond of Weightstill Woods, temporary Trustee, in amount of $20,000.

11. Intervening petition of Bondholders Protective Committee filed May 24, 1937.

12. Order entered May 24, 1937 granting leave to Committee to file intervening petition and order that notice of all motions and hearings be served on Defrees, Buckingham, Jones & Hoffman and leave to Committee to file Plan instanter and objections to Plan to be filed with Clerk on or before June 23, 1937, creditors classified and claims to be filed with Referee Chindblom on or before June 23, 1937 and objections on or before July 3, 1937 and cause set for July 9, 1937 for consideration of claims, proposal and consideration of confirmation of Plan and amendments and petitions for fees and expenses.

13. Plan of Reorganization of Debtor filed May 24, 1937.

14. Proof of claim of City National Bank and Trust Company of Chicago, as Trustee, filed June 23, 1937 with Referee Chindblom pursuant to order entered May 24, 1937.

15. Proof of claim of Bondholders Protective Committee filed June 23, 1937 with Referee Chindblom pursuant to order entered May 24, 1937.

16. Objections of Weightstill Woods, as Trustee, to various claims filed with Referee Chindblom pursuant to order entered May 24, 1937.

17. Report of Carl R. Chindblom, Referee in Bankruptcy, as Special Master, filed on July 8, 1937 on claims and objections thereto and acceptance of Plan of Reorganization.

18. Order entered July 14, 1937 on allowance or disallowance of claims pursuant to order entered May 24, 1937, including allowance of claim of City National Bank and

Trust Company of Chicago, as Trustee, with respect to First Mortgage Six Per Cent Real Estate Gold Bonds of Debtor and claim of Bondholders Protective Committee.

19. Order entered July 12, 1937 continuing Weightstill Woods as temporary Trustee of Debtor until further order of court.

20. Acceptance of Plan by Committee filed July 12, 1937.

21. Order entered July 14, 1937, Plan modified and amended; objections overruled and Plan, as modified and amended, approved and confirmed and petitions for fees to be filed September 14, 1937 and continued to September 14, 1937 for hearing on petitions for fees and expenses and on final decree.

22. Order entered July 15, 1937 amending order of confirmation.

23. Order entered July 17, 1937 on claim of Ingersoll and Wenstrand.

24. Order entered August 30, 1937 granting leave to City National Bank and Trust Company of Chicago, as Trustee, to file report and objections to be filed in 10 days and hearing set for September 15, 1937.

25. Report and account of City National Bank and Trust Company of Chicago, as Trustee, filed August 30 1937.

26. Answer and counterclaim filed September 9, 1937 by Weightstill Woods, as Trustee.

27. Objections filed September 9, 1937 by Weightstill Woods, as Trustee.

28. Order entered September 14, 1937 granting leave to City National Bank and Trust Company of Chicago, as Trustee, to file amendment to proof of claim.

29. Amendment to proof of claim filed September 14, 1937 by City National Bank and Trust Company of Chicago, as Trustee.

30. Order entered September 14, 1937 granting leave to Weightstill Woods, as Trustee, to file petition to show inter-hotel services and rule on any party in interest desiring to file an answer thereto to file such answer within 5 days and hearing on petition and answer, if any, set for September 21, 1937.

31. Order entered September 14, 1937 ruling City National Bank and Trust Company of Chicago, as Trustee, to file such answer as it may desire to answer and counterclaim of Court Trustee, and hearing on report and account of City National Bank and Trust Company of Chicago and

answer and counterclaim thereon set for September 21, 1937.

32. Petition filed September 14, 1937 by Weightstill Woods, Trustee, to have determined the compensation for services re Arlington Hotel.

33. Answer of Arlington, Inc. filed September 18, 1937 to petition of Weightstill Woods, as Trustee, filed September 14, 1937.

34. Petition of Defrees, Buckingham, Jones & Hoffman filed September 14, 1937 for allowance of fees.

35. Petition of Bondholders Protective Committee filed September 14, 1937 for allowance of fees and expenses.

36. Answer of City National Bank and Trust Company of Chicago, as Trustee, filed September 18, 1937, to counterclaim of Weightstill Woods, as Trustee.

37. Order of reference entered October 14, 1937, to Carl R. Chindblom, Special Master, to receive evidence of any applicant for fees, to reduce said evidence to writing and to report the same to the court and hearing on petitions for fees continued to October 21, 1937 and for entry of final decree.

38. Report of Carl R. Chindblom, Referee in Bankruptcy, as Special Master, filed October 21, 1937 on taking of evidence on application for fees and expenses.

39. Petition of Protective Committee filed October 13, 1937 for approval of form of documents to consummate Plan.

40. Order entered October 22, 1937 on petition of Bondholders Protective Committee amending and approving documents and designating original Trustees and authorizing Committee and counsel to consummate Plan.

41. Order entered October 12, 1937 taking report and account of City National Bank and Trust Company of Chicago, as Trustee, and answer and counterclaim of Weightstill Woods, as Trustee, under advisement, and Weightstill Woods, as Trustee, to file brief and submit findings of fact and conclusions of law within 15 days, and City National Bank and Trust Company of Chicago, as Trustee, to file brief and submit findings of fact and conclusions of law within 30 days, and Weightstill Woods, as Trustee, to reply within 40 days.

42. Order entered October 21, 1937 consolidating certain hearings relating to City National Bank and Trust Company of Chicago, as Trustee.

43. Suggestions and objections of City National Bank and Trust Company of Chicago, Charles S. Tuttle, et al.,

and Defrees, Buckingham, Jones & Hoffman to the decree, findings of fact and conclusions of law drafted by the Court Trustee and presented to the Court September 24, 1938, said suggestions and objections being filed September 30, 1938.

44. Memorandum of court relating to fees and expenses filed October 25, 1937.

45. Transcript of proceedings and Exhibits (Vols. I, II and III) filed December 30, 1937.

46. Order entered December 30, 1937 identifying and approving certificate of evidence and transcript of proceedings in matter of report and account of City National Bank and Trust Company of Chicago, Trustee, and answer and counterclaim thereto consisting of three Volumes (Vols. I, II and III).

47. Motion of Weightstill Woods, as Trustee, on December 30, 1937 for rule on Protective Committee to record releases and proceed for clearing title.

48. Petition of Continental Illinois National Bank and Trust Company of Chicago filed January 20, 1938 for order directing Granada Apartments Hotel Corporation to comply with provisions of Plan.

49. Order entered January 24, 1938 ordering Granada Apartments Hotel Corporation to pay to Continental Illinois National Bank and Trust Company of Chicago the indebtedness evidenced by certain additional sales contract.

50. Petition of Continental Illinois National Bank and Trust Company of Chicago filed July 14, 1938 for order requiring Weightstill Woods, as Trustee in Granada Apartments Hotel Corporation, to show cause.

51. Statement of receipts and disbursements May 17, 1937 to March 31, 1938 filed April 2, 1938.

52. Preliminary final report of Weightstill Woods, as Trustee, and petition for instructions as to further duties filed May 24, 1938.

53. Order entered May 24, 1938 reducing bond of Weightstill Woods, as Trustee, to $5,000 and that Weightstill Woods, as Trustee, be continued as Trustee until after disposition of all pending litigation to which he is a party.

54. Transcript of proceedings filed July 15, 1938.

55. Findings and order entered May 2, 1939.

56. Order entered June 20, 1939 continuing date for entry of final decree to November 16, 1939.

57. Petition of City National Bank and Trust Company of Chicago, individually and as Trustee, et al., for

order relating to transmission of original transcript of proceedings and Exhibits to Clerk of the Circuit Court of Appeals, for the Seventh Circuit, and order entered with respect thereto.

58. Consent of City National Bank and Trust Company of Chicago, as Trustee, filed herein June 7, 1939 (with attached copy of order dismissing for want of equity the petition of Weightstill Woods, Court Trustee, filed herein September 14, 1937, against The Arlington, Inc.) provided that such order shall have been entered by the Court.

59. Praecipe for record and proof of service thereof.

60. Certificate of Clerk.

Said transcript of record is to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Seventh Circuit and to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit at Chicago, Illinois, on or before the 22nd day of July, 1939.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
Attorneys for City National Bank and Trust Company of Chicago, individually and as Successor Trustee under indenture securing Granada Apartments First Mortgage Bonds; Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933, with respect to said Bonds; and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien, and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman, Appellants.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
105 South La Salle Street,
Chicago, Illinois,
Attorneys for Appellants.

Service of the above and foregoing Praecipe accepted and acknowledged this 28th day of June, 1939.

Weightstill Woods,
B. W. D. Wollesen,
Attorney Pro Se.
Mort D. and Frank Goldberg,
Attorneys for Granada Apartments, Inc.
David H. Greenberg,
Attorney for Florence Newman.
Samuel Micon,
Attorney for Edwin Rosenberg and Charles Cunningham, Receiver.
David H. Kraft,
Attorney for Maurice M. Kraft,
Loucks & Hennings,
Attorneys for Stephen L. Ingersoll, as Agent for Cordelia L. Ingersoll, as Executrix of the Estate of Stephen A. Ingersoll, Deceased.
Cassels, Potter & Bentley,
Attorneys for Edla and Emil W. Christiansen.
R. W. Proctor,
Attorney for G. R. Curnock.
Lee Walker,
Attorney for Reconstruction Finance Corporation.
Dent, Weichelt & Hampton,
Attorneys for Indemnity Insurance Company of North America.
Leo L. Donahoe (E. S.)
Attorney for E. W. Wenstrand.
Mayer, Meyer, Austrian & Platt,
Attorneys for Continental Illinois National Bank and Trust Company of Chicago.
William J. Flaherty,
Attorney for Charles H. Albers, Receiver.
Chapman and Cutler,
Attorneys for Harris Trust and Savings Bank.

David H. Greenberg,
Attorney for I. Gordon, J. Rose, Sam Harris and M. Bernard Greenberg.
Weightstill Woods,
By W. D. Wollesen,
Treasurer of Granada Apartments Hotel Corporation.

And on, to wit, the 18th day of July, A. D. 1939, came the City National Bank & Trust Company of Chicago, et al. by their attorneys and filed in the Clerk's office of said Court their certain Praecipe for Record in words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

In the Matter of Granada Apartments, Inc., a corporation, *Debtor.*	
City National Bank and Trust Company of Chicago, individually and as Successor Trustee, etc., et al., *Appellants.* *vs.* Weightstill Woods, Court Trustee, et al., *Appellees.*	In Proceedings for the Reorganization of a Corporation. No. 65811.

PRAECIPE FOR RECORD.

To the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division:

You Are Hereby Requested to make a transcript of the record of the proceedings had in the District Court of the United States for the Northern District of Illinois, Eastern Division, in the above entitled cause, to be filed in the United States Circuit Court of Appeals for the Seventh

Circuit pursuant to appeal heretofore allowed on June 22, 1939, by the United States Circuit Court of Appeals for the Seventh Circuit, and to include in such transcript of record the following, to wit:

1. Placita.
2. Order entered June 20, 1939, continuing date for entry of final decree to November 16, 1939.
3. Order entered May 2, 1939.
4. Praecipe of record and proof of service thereof.
5. Certificate of Clerk.

Said transcript of record to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Seventh Circuit, and to be forthwith filed in the office of the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, at Chicago, Illinois.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
Attorneys for City National Bank and Trust Company of Chicago, individually and as Successor Trustee under indenture securing Granada Apartments First Mortgage Bonds; Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933, with respect to said Bonds; and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman, Appellants.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
Attorneys for Appellants,
105 South La Salle Street,
Chicago, Illinois.

Northern District of Illinois, } ss.
Eastern Division, }

I, Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Praecipe filed in this Court in the cause entitled In the Matter of Granada Apartments, Inc., a corporation, *Debtor,* No. 65811, as the same appear from the original records and files thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 18th day of July, A. D. 1939.

Hoyt King,
(Seal) *Clerk.*

And afterwards, to-wit: On the twentieth day of July, 1939, a motion to extend the time to file transcript of record in cause No. 6986, which said motion to extend the time to file transcript is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of
Granada Apartments, Inc.,
a corporation,
Debtor.

City National Bank and Trust Company of Chicago, individually and as Successor Trustee, etc., *et al.*,
Appellants,
vs.
Weightstill Woods, Court Trustee, *et al.*,
Appellees.
} No. 6986.

MOTION.

Now come City National Bank and Trust Company of Chicago, individually and as Successor Trustee under in-

denture securing Granada Apartments First Mortgage Bonds. Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, Members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933, with respect to said Bonds, and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman, Appellants in the above entitled cause, by Vincent O'Brien, John Merrill Baker and Tracy Wilson Buckingham, their counsel, and move the Court for an order extending the time for filing the transcript of record in these proceedings with the Clerk of the United States Circuit Court of Appeals, for the Seventh Circuit, to and including September 16, 1939, and in support of said motion said Appellants represent:

1. That an appeal has been allowed by this Court (No. 6986) from an order entered May 2, 1939 in the District Court of the United States for the Northern District of Illinois, Eastern Division.

2. That an appeal has also been taken to this Court from the same order.

3. That in the appeal taken pursuant to notice of appeal a designation of record and an additional designation of record have been filed with the Clerk of the District Court, and an order has been entered in the District Court extending the time for filing the record with the Clerk of this Court to and including August 19, 1939.

4. That a praecipe for record has been filed with the Clerk of the District Court in connection with this appeal (No. 6986) in this Court.

5. That the documents to be included in the record to be filed with the Clerk of this Court in the appeal taken to this Court pursuant to the notice of appeal will include all documents included in the praecipe for record filed pursuant to appeal allowed in this Court (No. 6986) with the exception of certain documents which have heretofore been filed with the Clerk of this Court in this appeal (No. 6986).

6. That it is contemplated that, upon the filing of the record with the Clerk of this Court in connection with the appeal taken from the District Court pursuant to notice of appeal, a motion will be made in this Court for an order to consolidate this appeal (No. 6986) and the appeal taken from the District Court and to permit the rec-

ord so to be filed in the appeal taken to this Court pursuant to the notice of appeal, together with the documents now filed with the Clerk of this Court in this appeal (No. 6986), to stand as the record in both appeals.

7. That in order to permit the making of the motion in this Court it is necessary that the record with respect to the appeal taken to this Court pursuant to the notice of appeal be filed with the Clerk of this Court, the time for filing of which has been extended as hereinabove set forth to August 19, 1939.

8. That the complete transcript of record, unless this motion is granted in this appeal (No. 6986), must be filed with the Clerk of this Court on or prior to July 22, 1939,—a physical impossibility and an unnecessary duplication.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
Attorneys for City National Bank and Trust Company of Chicago, individually and as Successor Trustee under indenture securing Granada Apartments First Mortgage Bonds; Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933, with respect to said Bonds; and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman, Appellants.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
Attorneys for Petitioners,
105 South La Salle Street,
Chicago, Illinois.

Endorsed: Filed July 20, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the twenty-first day of July, 1939, the following further proceedings were had and entered of record, to-wit:

Friday, July 21, 1939.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank and Trust Company of Chicago, etc., *et al.*,
Appellants,
6986 *vs.*
Weightstill Woods, Court Trustee, *et al.*,
Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

On motion of counsel for appellants, it is ordered that the time for filing the transcript of record in this cause be, and it is hereby, extended to and including September 16, 1939.

And afterwards, to-wit: On the twenty-first day of August, 1939, there was filed in the office of the Clerk of this Court, in cause No. 7060, an appearance for appellee, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 7060. October Term, 19.....

Re: Granada,

Debtor.

City National,

vs.

Woods, etc.

The Clerk will enter my appearance as counsel for the Appellee, Court trustee.

Weightstill Woods,
77 West Washington,
Chicago.

Endorsed: Filed August 21, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the twenty-fifth day of August, 1939, there was filed in the office of the Clerk of this Court, in cause No. 7060, an appearance for appellant, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 7060. October Term, 1939.

In Re: Granada Apts.,

Debtor.

City National Bk. & Tr. Co.,

vs.

Weightstill Woods,

As Court Trustee.

The Clerk will enter my appearance as counsel for the Appellant.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
105 S. La Salle St.,
Chicago, Illinois.

Endorsed: Filed August 25, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the eighth day of September, 1939, there was filed in the office of the Clerk of this Court, in causes Nos. 6986-7060, a motion for consolidation, which said motion for consolidation is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of
Granada Apartments, Inc.,
a corporation,
Debtor.

City National Bank and Trust Company of Chicago, individually and as Successor Trustee, etc., *et al.*,
Appellants,
vs.
Weightstill Woods, Court Trustee, *et al.*,
Appellees.

No. 6986.

MOTION.

Now come City National Bank and Trust Company of Chicago, individually and as Successor Trustee under indenture securing Granada Apartments First Mortgage Bonds, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee, acting under the Deposit Agreement dated April 25, 1933, with respect to said bonds, and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, copartners doing business as Defrees, Buckingham, Jones & Hoffman, Appellants in the above entitled cause, by Vincent O'Brien, John Merrill Baker and Tracey Wilson Buckingham, their counsel, and move the Court for the entry of an order:

(a) That the appeal of Appellants allowed by this Court and now pending in this Court as the above entitled cause number 6986, and the appeal of Appellants taken to this Court pursuant to notice of appeal heretofore filed in the District Court of the United States for the Northern District of Illinois, Eastern Division, and now pending in this Court as cause number 7060, be consolidated as cause number 6986;

(b) That the transcript of record now filed with the

Clerk of this Court in the above entitled cause number 6986 and the transcript of record now filed with the Clerk of this Court in cause number 7060, be consolidated and stand as the single consolidated transcript of record in both of said appeals as so consolidated;

(c) That the Clerk of this Court be directed to cause to be printed only such portions of the single consolidated transcript of record as are designated in "Exhibit A" attached to this motion and made a part hereof, including the printing of a condensed and narrative statement of the transcript of proceedings now filed with the Clerk of this Court in cause number 7060 and of a summary statement of certain exhibits attached to said condensed and narrative statement, in lieu of the printing of said transcript of proceedings and said exhibits in full, and that the said single consolidated transcript of record as so now filed and the said single printed transcript of record shall stand as the record in both of said appeals as so consolidated, with leave to any party where necessary or desirable to refer by citation to the transcript by page as well as to the printed transcript; and

(d) That Appellants be permitted to file one brief and one reply brief with respect to both appeals as so consolidated, and that each of the Appellees be permitted to file one brief with respect to both appeals as so consolidated, the said respective briefs and reply brief to stand as the briefs and reply briefs in both of said appeals as so consolidated.

That in support of said motion the said Appellants represent:

1. That on May 2, 1939 the District Court of the United States for the Northern District of Illinois, Eastern Division, entered an order in proceedings therein pending and an appeal was taken from said order by Appellants pursuant to the Federal Rules of Civil Procedure by filing a notice of appeal as therein provided;

2. That a portion of the said order of May 2, 1939 dismissed certain petitions of Appellants praying for the allowance of fees and expenses and, therefore, pursuant to the ruling of this Court in the case of *In re Albert Dickinson Co., Inc.*, 104 Fed. (2d) 771, Appellants filed their petition with this Court for leave to appeal, which petition was granted, said appeal being the appeal in the said above entitled cause number 6986;

3. That in the appeal taken pursuant to notice of appeal, Appellants filed with the Clerk of the District Court their designation of record, and the transcript of record has been filed with the Clerk of this Court and docketed as number 7060;

4. That in this appeal, number 6986, Appellants have filed with the Clerk of this Court, pursuant to praecipe filed with the Clerk of the District Court, a transcript of a short record containing only the formal documents necessary, together with the transcript of record filed in the appeal taken pursuant to notice of appeal, number 7060, to make one complete transcript of record which can be used in both appeals as consolidated;

5. That both of said appeals vary only in form and not in substance in that the parties and issues raised are identical in both appeals;

6. That the transcript of the proceedings had and taken in the District Court is very large and voluminous and, including exhibits, contains some 2200 pages; that Appellants in their assignment of errors and statement of points have assigned numerous errors to findings of fact made by the District Court, alleging that such findings of fact were either not supported by the evidence or that there was no evidence whatever to support them or that they were contrary to the evidence and it was therefore necessary to bring the complete record, including the entire transcript of the proceedings, before this Court on appeal; that Appellants have prepared and lodged with the Clerk of this Court a condensed and narrative statement of said testimony and summary statement of certain exhibits and have served a copy thereof upon Weightstill Woods, Court Trustee, one of the Appellees herein; and that in order to reduce the cost of printing the transcript of record in this Court and to make the record more convenient for this Court, Appellants are requesting in this motion that only certain pleadings and exhibits, as indicated in "Exhibit A" hereto, be required to be printed at all and that the condensed and narrative statement of evidence and summary of certain other exhibits lodged with the Clerk and served on Weightstill Woods as aforesaid be printed in lieu of the transcript of proceedings and said exhibits in full; and

7. That this motion is addressed to this Court by virtue of Subdivision (1) of Rule 75 of Federal Rules of

Civil Procedure, which provides that what part of the record on appeal filed in the Appellate Court shall be printed and the manner of the printing and the supervision thereof shall be as prescribed in the rules of the court to which the appeal is taken. The same rule has been adopted by the District Court of the United States for the Northern District of Illinois, Eastern Division, being Subdivision (1) of Rule 27 of the Rules of that Court. That by virtue of Rule 42 of the Rules of this Court, Subdivision (1) of Rule 75 of the Federal Rules of Civil Procedure has been adopted by this Court as a portion of its Rules.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,

Attorneys for City National Bank and Trust Company of Chicago, individually and as Successor Trustee under indenture securing Granada Apartments First Mortgage Bonds; Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933 with respect to said Bonds; and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, copartners doing business as Defrees, Buckingham, Jones & Hoffman, Appellants.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
Attorneys for Petitioners,
105 South La Salle Street,
Chicago, Illinois.

EXHIBIT A.

The following documents to be included in the printed transcript of record:

1. Documents included in designation of record filed here in cause No. 7060:

6. Order entered May 11, 1937 approving voluntary and involuntary petitions as properly filed and consolidating voluntary and involuntary petitions and appointing temporary Trustee.

10. Order entered May 20, 1937 approving bond of Weightstill Woods, temporary Trustee, in amount of $20,000.

11. Intervening petition of Bondholders Protective Committee filed May 24, 1937.

12. Order entered May 24, 1937 granting leave to Committee to file intervening petition and order that notice of all motions and hearings be served on Defrees, Buckingham, Jones & Hoffman and leave to Committee to file Plan instanter and objections to Plan to be filed with Clerk on or before June 23, 1937, creditors classified and claims to be filed with Referee Chindblom on or before June 23, 1937 and objections on or before July 3, 1937 and cause set for July 9, 1937 for consideration of claims, proposal and consideration of confirmation of Plan and amendments and petitions for fees and expenses.

13. Plan of Reorganization of Debtor filed May 24, 1937.

14. Proof of claim of City National Bank and Trust Company of Chicago, as Trustee, filed June 23, 1937 with Referee Chindblom pursuant to order entered May 24, 1937.

15. Proof of claim of Bondholders Protective Committee filed June 23, 1937 with Referee Chindblom pursuant to order entered May 24, 1937.

16. Objections of Weightstill Woods, as Trustee, to various claims filed with Referee Chindblom pursuant to order entered May 24, 1937.

17. Report of Carl R. Chindblom, Referee in Bankruptcy, as Special Master, filed on July 8,

1937 on claims and objections thereto and acceptance of Plan of Reorganization.

18. Order entered July 14, 1937 on allowance or disallowance of claims pursuant to order entered May 24, 1937, including allowance of claim of City National Bank and Trust Company of Chicago, as Trustee, with respect to First Mortgage Six Per Cent Real Estate Gold Bonds of Debtor and claim of Bondholders Protective Committee.

19. Order entered July 12, 1937 continuing Weightstill Woods as temporary Trustee of Debtor until further order of court.

20. Acceptance of Plan by Committee filed July 12, 1937.

21. Order entered July 14, 1937, Plan modified and amended; objections overruled and Plan, as modified and amended, approved and confirmed and petitions for fees to be filed September 14, 1937 and continued to September 14, 1937 for hearing on petitions for fees and expenses and on final decree.

22. Order entered July 15, 1937 amending order of confirmation.

24. Order entered August 30, 1937 granting leave to City National Bank and Trust Company of Chicago, as Trustee, to file report and objections to be filed in 10 days and hearing set for September 15, 1937.

25. Report and account of City National Bank and Trust Company of Chicago, as Trustee, filed August 30, 1937.

26. Answer and counterclaim filed September 9, 1937 by Weightstill Woods, as Trustee.

27. Objections filed September 9, 1937 by Weightstill Woods, as Trustee.

28. Order entered September 14, 1937 granting leave to City National Bank and Trust Company of Chicago, as Trustee, to file amendment to proof of claim.

29. Amendment to proof of claim filed September 14, 1937 by City National Bank and Trust Company of Chicago, as Trustee.

30. Order entered September 14, 1937 granting

leave to Weightstill Woods, as Trustee, to file petition to show inter-hotel services and rule on any party in interest desiring to file an answer thereto to file such answer within 5 days and hearing on petition and answer, if any, set for September 21, 1937.

31. Order entered September 14, 1937 ruling City National Bank and Trust Company of Chicago, as Trustee, to file such answer as it may desire to answer and counterclaim of Court Trustee, and hearing on report and account of City National Bank and Trust Company of Chicago and answer and counterclaim thereon set for September 21, 1937.

32. Petition filed September 14, 1937 by Weightstill Woods, Trustee, to have determined the compensation for services re Arlington Hotel.

33. Answer of Arlington, Inc. filed September 18, 1937 to petition of Weightstill Woods, as Trustee, filed September 14, 1937.

34. Petition of Defrees, Buckingham, Jones & Hoffman filed September 14, 1937 for allowance of fees.

35. Petition of Bondholders Protective Committee filed September 14, 1937 for allowance of fees and expenses.

36. Answer of City National Bank and Trust Company of Chicago, as Trustee, filed September 18, 1937, to counterclaim of Weightstill Woods, as Trustee.

37. Order of reference entered October 14, 1937 to Carl R. Chindblom, Special Master, to receive evidence of any applicant for fees, to reduce said evidence to writing and to report the same to the court and hearing on petitions for fees continued to October 21, 1937 and for entry of final decree.

38. Report of Carl R. Chindblom, Referee in Bankruptcy, as Special Master, filed October 21. 1937 on taking of evidence on application for fees and expenses.

39. Petition of Protective Committee filed October 13, 1937 for approval of form of documents to consummate Plan.

40. Order entered October 22, 1937 on petition

of Bondholders Protective Committee amending and approving documents and designating original Trustees and authorizing Committee and counsel to consummate Plan.

41. Order entered October 12, 1937 taking report and account of City National Bank and Trust Company of Chicago, as Trustee, and answer and counterclaim of Weightstill Woods, as Trustee, under advisement, and Weightstill Woods, as Trustee, to file brief and submit findings of fact and conclusions of law within 15 days, and City National Bank and Trust Company of Chicago, as Trustee, to file brief and submit findings of fact and conclusions of law within 30 days, and Weightstill Woods, as Trustee, to reply within 40 days.

42. Order entered October 21, 1937 consolidating certain hearings relating to City National Bank and Trust Company of Chicago, as Trustee.

43. Suggestions and objections of City National Bank and Trust Company of Chicago, Charles S. Tuttle, et al., and Defrees, Buckingham, Jones & Hoffman to the decree, findings of fact and conclusions of law drafted by the Court Trustee and presented to the Court September 24, 1938, said suggestions and objections being filed September 30, 1938.

44. Memorandum of court relating to fees and expenses filed October 25, 1937.

46. Order entered December 30, 1937 identifying and approving certificate of evidence and transcript of proceedings in matter of report and account of City National Bank and Trust Company of Chicago, Trustee, and answer and counterclaim thereto consisting of three Volumes (Vols. I, II and III).

47. Motion of Weightstill Woods, as Trustee, on December 30, 1937 for rule on Protective Committee to record releases and proceed for clearing of title.

51. Statement of receipts and disbursements May 17, 1937 to March 31, 1938 filed April 2, 1938.

53. Order entered May 24, 1938 reducing bond of Weightstill Woods, as Trustee, to $5,000 and

that Weightstill Woods, as Trustee, be continued as Trustee until after disposition of all pending litigation to which he is a party.

54. Transcript of proceedings filed July 15, 1938.

55. Findings and order entered May 2, 1939.

59. Notice of appeal with statement of the names of the parties to whom such notice was mailed and the date of mailing, as shown by the affidavit of mailing on file in the office of the Clerk of the District Court.

62. Statement of points.

2. Documents included in praecipe for record filed in this cause No. 6986;

2. Order entered June 20, 1939 continuing date for entry of final decree to November 16, 1939.

3. Condensed and narrative statement of transcript of proceedings and summary statement of certain exhibits lodged with the Clerk of this Court in this cause No. 6986.

4. The following exhibits in full contained in said transcript of proceedings heretofore lodged with the Clerk of this Court in cause No. 7060:

VOLUME I.

	Page
1. Court Trustee's Exhibit B	92
2. Court Trustee's Exhibit J (Pages 11-16, inclusive, and pages 54-56, inclusive)	168
3. Court Trustee's Exhibit Zero-1	487a
4. Court Trustee's Exhibit Zero-3	496
5. Court Trustee's Exhibit R	464a
6. City National's Exhibit 1	273
7. City National's Exhibit 2	682
8. City National's Exhibit 3	683
9. City National's Exhibit 4	685
10. City National's Exhibit 5	691
11. City National's Exhibit 8	765

VOLUME II.

		Page
12.	Court Trustee's Exhibit U	884
13.	Court Trustee's Exhibit V (Only that part carried under the black-faced heading of "Valuation" and running down to the black-faced heading of "Income")	892
14.	Court Trustee's Exhibit Y	959
15.	Court Trustee's Exhibit Y-1	959
16.	City National's Exhibit G	1130
17.	City National's Exhibit O	1281
18.	City National's Exhibit P	1288
19.	City National's Exhibit R	1299
20.	City National's Exhibit T (Order in full on pages 1309 and 1310 and pages 1311-1315, inclusive)	1309
21.	City National's Exhibit U	1344

VOLUME III.

22.	City National's Exhibit W	1487
23.	City National's Exhibit Z	1580
24.	City National's Exhibit A-1 (First two pages thereof and recapitulation appearing on pages 1633-ee to 1633-hh)	1633a
25.	Court Trustee's Exhibit AA	1797
26.	Court Trustee's Exhibit BB	1825a
27.	Court Trustee's Exhibit 2	1877
28.	City National's Exhibit 2	1905-11
29.	City National's Exhibit 3	1905-14
30.	City National's Exhibit 4	1905-18
31.	City National's Exhibit 5 (Schedule A-3 at pages 1905-1919)	1905-31
32.	City National's Exhibit 6 (Schedule P-4 at page 2108)	2110-18
33.	City National's Exhibit 7 (Schedule 1 at page 2111-1)	2111-6
34.	City National's Exhibit 8	2115
35.	Court Trustee's Exhibit R	2140

Endorsed: Filed September 8, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the sixteenth day of September, 1939, there was filed in the office of the Clerk of this Court, in cause No. 6986, a counter motion to dismiss etc., which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1939.

No. 6986.

In the Matter of
Granada Apartments, Inc.,
Debtor.

COUNTER MOTION TO DISMISS APPEAL 6986.
ANSWER TO MOTION FOR CONSOLIDATION.

Weightstill Woods,
As Court Trustee.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.
October Term, 1939.

No. 6986.

In the Matter of
Granada Apartments, Inc.,
Debtor.

COUNTER MOTION TO DISMISS APPEAL 6986.

Weightstill Woods as court trustee, presents the following answer and objections to all petitions and motions by Appellants in this court, and respectfully makes motion that appeal 6986 as allowed by this court, be dismissed for want of power and jurisdiction for this court to allow such an appeal.

Respectfully submitted,
Weightstill Woods,
As Court Trustee.

ANSWER AND OBJECTIONS TO THE APPEAL AND TO ALL MOTIONS AND PETITIONS BY THE APPELLANTS.

Weightstill Woods as Court Trustee respectfully says:

1. Your objector is court trustee in proceedings 65811, in the District Court of the United States at Chicago, which suit wast filed April 19, 1937, for the reorganization of Granada Apartments, Inc., debtor, an Illinois corporation, and remains pending.

2. That on May 2, 1939 in said proceedings, a decree was entered in said District Court to dispose of an accounting between City National Bank and Trust Company and others, and said Court Trustee for the debtor.

3. That on June 1, 1939, said City National Bank and Trust Company and others, filed in said proceedings in the District Court, their notice of appeal from said de-

cree, and on June 8, 1939, filed their Designation of Points and Praecipe for Record, in which they stated that said record was to be filed on or before July 9, 1939, as an appeal in the United States Circuit Court of Appeals for the Seventh Circuit at Chicago, Illinois; which was done pursuant to Rule 73 established by the Supreme Court to govern appeals, and pursuant to Section 25 of the Chandler Act in force June 22, 1938. More than $500 is involved in said appeal. On July 7, 1939, appellants secured an order in District Court, extending time until August 19, 1939, for docketing said case on appeal; and within said time did so docket said appeal in this Court of Appeals as case No. 7060.

4. That on June 10, 1939, said Court Trustee also, in the same manner, took an appeal from portions of said decree dated May 2, 1939, by his notice filed in said District Court pursuant to said rules and statute. More than $500 is involved in said appeal. In due course said appeal was docketed as No. 7061 in the Court of Appeals.

5. That on June 12, 1939 (more than forty days after decree of May 2, 1939), said City National Bank and Trust Company and others, filed as cause 6986 in said United States Circuit Court of Appeals for the Seventh Circuit, their new petition and exhibits, running more than one hundred typewritten pages, seeking to have said Appellate Court by its order grant an additional appeal, upon the same grounds to the same parties and from the same decree dated May 2, 1939, and they expressly stated to Court of Appeals that more than $500 is involved.

6. That in opposition to said appellate petition filed by City National Bank and others on June 12, 1939, in said Circuit Court of Appeals, your objector as Court Trustee filed an answer, which asked that the prayer of said appellate petition by City National Bank and Trust Company and others be denied.

7. That the Circuit Court of Appeals by order June 22, 1939, allowed an appeal, and later issued a citation.

8. That on June 26, 1939 said appellants in 6986 filed in the District Court, a second praecipe for record mentioning 60 items, in substance a repetition of said praecipe filed June 8, 1939 by them for their prior appeal dated June 1st, and at the end thereof stated that the record in 6986 is to be filed in Court of Appeals on July 22, 1939. Later they sought and obtained an order by Court of Appeals to enlarge the filing time until September 16, 1939, and filed a record within that time.

9. Objector says that said orders and citation by Circuit Court of Appeals, is an attempt to revive former practice and procedure, which has been abolished by Act of Congress and the rules established by the Supreme Court for the conduct of appeals; and that such attempted revivor is contrary to paramount law. Such revivor would set at naught the years of effort by Congress, the Rules Committee, the Supreme Court, and the profession generally, which have labored to establish simple and uniform procedure for appeals.

10. It is obvious that the allowance of said appeal in said manner by the Court of Appeals, introduces duplication, repetition, surplusage and confusion into the record of said case in the District Court and the Court of Appeals. That is prejudicial to the appeal of right previously taken, and defeats primary rights vested in the Court Trustee. Under Rule 75 only one record can be certified for all appeals from the same order. Here two are certified. Immediate and irreparably damage results to the appeal regularly and rightfully taken by objector the Court Trustee.

11. Objector states that any attempt that may be made to justify said appellate petitions and orders, by reference to Section 250 of Chandler Act, is unfounded because (1) no intention exists and no effort is made to review any part of said decree dated May 2, 1939, "upon the original papers"; and (2) such an appellate allowance of appeal is not taken "in the same manner" nor "within the time provided for appeals by this act" (Chandler Act, Section 250); and (3) more than the sum of $500 is involved (Section 24 of Chandler Act).

12. Wherefore objector says that all proceedings in 6986 should be dismissed for want of authority and jurisdiction, with costs to be assessed against the appellants.

Respectfully submitted,

Weightstill Woods,

As Court Trustee.

Weightstill Woods being sworn, states that he has prepared and has read the foregoing answer and objections, and that the factual statements therein made are true.

.....

Subscribed and sworn to before me this September 15, 1939.

.....

Notary Public, Cook County, Illinois.

SUGGESTIONS AND AUTHORITIES IN SUPPORT OF COUNTER MOTION TO DISMISS APPEAL AND IN SUPPORT OF ANSWER AND OBJECTIONS TO CONSOLIDATION.

A. The order by the Supreme Court for General Orders in Bankruptcy in effect since February 13, 1939, provides that said orders:

> "shall govern all proceedings then pending to which its provisions are applicable except to the extent that in the opinion of the court its application to such proceedings would not be practicable or would work injustice."

and order "No. 36 Appeals" provides:

> "Appeals shall be regulated, except as otherwise provided in the Act, by the rules governing appeals in civil actions in the courts of the United States, including *the rules of civil procedure for the District Courts of the United States.*"

B. Federal Court Rule 73, established by the Supreme Court for the District Courts of the United States, provides the manner and time for taking an appeal and for docketing an appeal. This supplants former practice, which is abolished.

The time here sought to be allowed to appellant by this court to September 16, 1939 for filing the transcript, exceeds the 90 days maximum under Rule 73g, after appeal taken in the District Court by appellants on June 1, 1939. By the Statute only the District Court may enlarge the time. This Circuit Court of Appeals is not given that power by the statute. Rule 75 provides that there may be only one record, for all appeals from the same order. The appeals now sought to be consolidated are from the same order dated May 2, 1939.

C. Section 250 and 498 of the Chandler Act, are not additional machinery for appeals. (Your Honors so ruled on former appeal between said parties, interpreting similar language of 77B.) *Re Granada,* 104 F. 2d 970 or 973, where this Court of Appeals says:

> "The words 'but appeals from orders fixing such allowances may be taken to the Circuit court of appeals, and independently of other appeals in the same proceeding and shall be heard summarily' merely des-

ignate a class of orders from which an appeal may be taken without in anywise enlarging the class of persons who are entitled to appeal."

Those sections merely say that appeals about allowances for compensation or reimbursement "shall be heard summarily upon the original papers" and may be taken "independently of other appeals in the same proceeding." It was necessary to use the alternate language "be taken to and allowed by the Circuit Court of Appeals" because Section 24 of the Act allows appeals for less than $500 only by discretion of the Court of Appeals.

D. At bar we do not have that kind of case. The petitions for appellants all show to this court, that more than $500 is involved in this court, and show that an appeal of right separately was taken by Notice of Appeal filed June 1, 1939 in the District Court. Under these facts this court lacks jurisdiction to allow an appeal. Those facts exclude such jurisdiction. Also:

1. No intention exists and no effort is made to review any part of the order dated May 2, 1939, "on the original papers."
2. Such an appellate allowance of appeal has not been taken "in the manner" nor "within the time" provided for appeals by Section 250 of the Chandler Act.
3. Only the District Court may extend the time for filing the record on appeal. Rule 73g. It did not enter the order therefor.
4. More than $500 is involved in this record (Section 24).

F. The petition for appellants filed July 20th (par. 8) speaks of "physical impossibility and unnecessary duplication." Your objector pointed to that fact by answers filed June 17, 1939 to the first petition here for this appeal. Repetition, surplusage and confusion are the result of the revival of the old double procedure.

G. Furthermore all the old uncertainty about appeals will be revived, if this court allows appeals when $500 or more is involved. All the work done by Congress, by the Supreme Court, by the Rules Committee, and by the profession for many years, seeking to simplify and unify appellate procedure, would be swept away by such revivor of former practice.

H. Objector submits that the order by Court of Appeals dated June 22, 1939, for an allowance of appeal

6986, is void for want of authority. It conflicts with the paramount law. That order should be vacated. The order dated July 21, 1939 for filing time should also be vacated. All the petitions by appellants to this court should be denied. The citation should be quashed. The petition to this court for an appeal, dated June 12, 1939, should be dismissed for want of jurisdiction in this court to entertain the same under existing law applicable to this case.

I. In the alternative objector suggests that this Court of Appeals should submit the question of validity of appeal 6986 to the Supreme Court at Washington, as a preliminary question before judgment, under Rule 39 of the Supreme Court. The public interest will be promoted by prompt settlement in that court of this question of the jurisdiction of this court to allow appeals.

J. Objector asks that the matter of printing the record (par. c, 6 and 7 of said petition by appellants September 8, 1939) be deferred until the matter of jurisdiction to allow appeals be first finally determined; and that objector have leave to examine the record fully thereafter, and to submit his suggestions as to matter for printing.

The Wrong Manner of Appeal Will Be Dismissed.

Union Trust Company of Maryland v. *Townsend*, 101 F. 2d 903 at 914, C. C. A. 4.

Bender v. *Davis*, 365 Ill. 389.

The Methods of Review Are Mutually Exclusive.

England v. *Ducasse* (C. C. A. 9, Bankruptcy Law Service 51828).

Wayne U. G. Co. v. *Owens I. G. Co.*, C. C. A. 4, 83 F. 2d 98, 84 Fed. 965.

F. P. Newport Corporation, 93 F. 2d 630 at 633, C. C. A. 9.

London v. *O'Dougherty*, 102 F. 2d 524 at 525, C. C. A. 2.

Winton Shirt Corporation, 104 F. 2d 777 at 779, C. C. A. 3.

3 Ohlinger Federal Practice 949, 953, 956.

Finletter Reorganizations, page 611.

Bender v. *Davis*, 365 Ill. 389.

The One Opposing Decision Should Be Reversed.

Albert Dickinson Co., 104 F. 2d. 771 at 779.

Received copy of the foregoing counter motion, answer, objections, authorities and suggestions.

Vincent O'Brien and Associates,

By.....

Mort D. and Frank Goldberg,

By.....

Endorsed: Filed September 16, 1939. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the sixteenth day of September, 1939, there was filed in the office of the Clerk of this Court in cause No. 7060, a motion to dismiss certain appellants out of appeal, which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1939.

In the Matter of Granada Apartments, Inc., a Corporation, Debtor.	
City National Bank and Trust Company, and others, *Appellants,* *vs.* Weightstill Woods, Court Trustee, and others, *Appellees.*	No. 7060.

MOTION BY COURT TRUSTEE.

Weightstill Woods as Court Trustee makes motion that certain appellants

City National Bank and Trust Company of Chicago *as Successor Trustee under indenture securing Granada Apartments First Mortgage Bonds;*

Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, *as Members of the Protective Committee, acting under the Deposit Agreement dated April 25, 1933, with respect to said bonds,*

be dismissed out of said proceedings, and that said appeal be dismissed as to them by order of this court;

For reasons set forth in suggestions herewith.

The Court Trustee asks further time to consider the condensed Narrative Statement of the Evidence, and leave thereafter to file his suggestions as to matter for printing.

Respectfully submitted,

Weightstill Woods,
as Court Trustee.

SUGGESTIONS BY THE COURT TRUSTEE IN SUPPORT OF MOTION TO DISMISS AS TO CERTAIN APPELLANTS.

1. Named appellants (successor trustee and Committee) were in this court on former appeal, case 6744, which is reported 104 F. (2d) 970, suing this Court Trustee.

2. That appeal was dismissed because named appellants are defunct and no longer have legal existence.

3. By opinion in that appeal Your Honors rule at page 972:

> "It would seem, on general principles, that neither the bank trustee, nor the Committee, had any interest in the proceedings after the plan of reorganization, approved by the court, had been consummated, with the exception of the former's claim No. 9, which we shall assume was pending at the time of the entry of the order appealed from. The deed of trust from which the former received its authority, and the bonds deposited with the latter and from which it received its authority, were, as heretofore recited, cancelled and delivered to the reorganized company and thus the basis upon which both appellants participated in the reorganization proceedings were destroyed."

That ruling by Your Honors was based upon your finding in the same appeal, between these same parties as follows:

> "The new corporation, Granada Apartments Hotel Corporation, was issued a charter by the State of Illinois October 30, 1937, and on November 1, 1937, the trustee executed and delivered to it a deed to the real estate and an assignment of all the personal property of the debtor, as well as possession, management, and control of the debtor's property and affairs,

excepting only cash in bank and rights of action as directed by the court in its order of October 22, 1937. In conformity with the plan, the bondholders and other creditors of the debtor were issued securities of the new corporation in lieu of those of the debtor. The original trust deed by which the trust company received its authority, as well as the committee representing bondholders whose bonds were secured thereby, was cancelled and released of record in the Recorder's office of Cook County, Illinois, on February 10, 1938, surrendered to the court trustee, and by him delivered to the new corporation."

4. Thereby it is adjudicated on former appeal, that said bank trustee and committee are defunct and have no legal existence since Granada plan was confirmed July 14, 1937.

5. Wherefore the court trustee respectfully asks for an order of dismissal pursuant to the motion herewith.

Respectfully submitted,
Weightstill Woods,
Weightstill Woods,
as Court Trustee.

Received copy of foregoing motion and suggestions.
Vincent O'Brien and Associates,
By Vincent O'Brien,
Mort D. and Frank Goldberg,
By Mort D. and Frank Goldberg.

Endorsed: Filed September 16, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the twenty-fifth day of September, 1939, there was filed in the office of the Clerk of this Court in cause No. 6986, an Answer of appellants to Court Trustee's motion to dismiss appeal, which said Answer is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1939.

In the Matter of
Granada Apartments, Inc.,
Debtor. } No. 6986.

ANSWER OF APPELLANTS TO COURT TRUSTEE'S MOTION TO DISMISS APPEAL.

Now come City National Bank and Trust Company of Chicago, individually and as Successor Trustee under Trust Indenture securing Granada Apartments First Mortgage Bonds, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the protective committee acting under deposit agreement for the holders of said bonds, and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman, and for answer to the motion of Weightstill Woods, as Court Trustee, to dismiss their appeal herein, say:

1. They admit the factual averments contained in paragraphs 1 to 8, inclusive, of the Court Trustee's motion to dismiss except as to the statement contained in paragraph 8 that a second praecipe for record was filed, as to which they say that there was but one praecipe for record filed in the matter of this appeal and that in the matter of the other appeal, taken as of right and here docketed as No. 7060, there was a designation of record filed.

2. Further relevant facts not mentioned by the Court Trustee in his statement are as follows:

(a) The decree mentioned in paragraph 2 of the Court Trustee's motion from which appeal is taken is not limited to the disposition of an accounting between City National Bank and Trust Company and others, for said decree makes final disposition of the claim of City National Bank and Trust Company of Chicago and of the requests for allow-

ances of fees and expenses made by the Committee and by Defrees, Buckingham, Jones & Hoffman as counsel for the Committee, and others.

(b) In paragraph 5 of his said motion, the Court Trustee refers to the petition for leave to appeal filed in this cause, No. 6986 by Appellants on June 12, 1939, but fails to mention the pertinent portion of said petition appearing at the bottom of page 2 and at the top of page 3 thereof, where Appellants advised the Court of the appeal taken as of right from the decree entered May 2, 1939 and further advised the court that subsequent to taking that appeal, Appellants had discovered the case of "In re Albert Dickinson & Company, Inc." which held that an appeal from a fee allowance under the Chandler Act must be taken by petition for leave to appeal.

(c) In paragraph 6 of his said motion, the Court Trustee calls attention to the answer which he filed in opposition to our petition for leave to appeal, but he fails in paragraph 6, or elsewhere in his motion, to point out that in that answer he raised precisely the same points which he now raises again in his motion, and we refer the Court to that answer.

(d) In paragraph 5 of his said motion the Court Trustee refers to our petition for leave to appeal and Exhibits filed June 12, 1939, which he says runs more than 100 typewritten pages. The petition itself is contained in the first eleven pages, and the remaining pages are Exhibits and supporting brief. We particularly refer the court to the petition itself for the facts which existed at the time of the filing of the petition.

(e) In paragraph 5 of his motion, the Court Trustee points out that June 12, 1939, the date of the filing of the petition for leave to appeal, was more than forty days after the date of the entry of the decree May 2, 1939, but fails to call attention to the fact that the fortieth day was Sunday, June 11, 1939.

3. On the facts as so corrected and amplified, Appellants suggest the following points in opposition to the allowance of the Court Trustee's motion to dismiss:

(a) This Court passed upon all the points now repeated by the Court Trustee when it allowed the petition for leave to appeal by its order of June 22, 1939.

(b) As indicated in Appellants' petition for leave to appeal, Appellants were under the belief that petition for leave to appeal from fee allowances was unnecessary under

the Chandler Act. It was only by reason of this Court's decision in the case of Albert Dickinson Company, 104 Fed. (2d) 771, that petition for leave to appeal was submitted to this Court as a portion of said decree entered on May 2, 1939 disallowed certain petitions for fees and expenses.

As petition for rehearing in that case was denied, Appellants still regard that case as binding law in this Circuit and are therefore interested in showing to the Court that this appeal was properly perfected, and in time.

(c) In his motion to dismiss, the Court Trustee says that the petition for leave to appeal was not filed within the required forty days because the decree appealed from was entered May 2, 1939 and the petition was not filed until June 12, 1939, which was forty-one days. The fact is that June 11, 1939 was a Sunday, and we therefore refer the Court to Rule 6(a) of Federal Rules of Civil Procedure and to old Equity Rule 80, both of which provide that where the last day for the doing of an act falls on a Sunday the act is not required to be done until the next succeeding day which is not a holiday.

(d) At page 6 of the Court Trustee's motion, paragraph (b) thereof, he complains that under Rule 73(g) of the Rules of Civil Procedure only the District Court and not the Court of Appeals may enlarge the time for the filing of a record and that the District Court is expressly limited to an extension not exceeding ninety days from the date of the first notice of appeal.

But we point out that Federal Rule 73(g) has nothing to do with the instant case since those rules quite patently relate only to appeals perfected as of right under the new Federal Rules of Civil Procedure, whereas the appeal in the above entitled cause is by leave of the Court of Appeals and the time for the filing of the record is prescribed by the rules of the Court of Appeals, namely, Rule 13, Section 1, which says, among other things, that the transcript shall be filed with the Clerk of the Court of Appeals on or before the return day specified in Section 3 of the rule unless such time is enlarged by a judge of the District Court *or by this court or some judge thereof.*

Even if, by any possibility, the rule referred to by the Court Trustee did not permit this Court or a Judge thereof to enlarge the time for filing a record, (an inconceivable premise,) and that said rule also limited the time for filing a record to ninety (90) days from the time of filing in this court of a *petition for leave to appeal* and that ninety (90)

days should begin to run on the date of filing the *petition for leave to appeal* although the rule specifically only applies to *a notice of appeal,* Appellants submit that (a) the record was filed in this Court on July 19, 1939, being within said ninety (90) day period, and (b) such motion of the Court Trustee must be dismissed because it was not made before the record was actually filed (*American Gas Machine Co.* v. *Willcuts,* C. C. A. 8th, 1937, 87 Fed. (2d) 924).

(e) Appellants admit some of the effects contended for by the Court Trustee in paragraph 10 of his petition, but we suggest that they are inherent if appeals from fee allowance must be taken by leave of Circuit Court of Appeals and that, in so far as possible, Appellants are seeking to minimize them by Appellants' motion for consolidation and for the use of one record on both appeals and for the printing of a narrative statement, all of which motions are now pending and undetermined before this court.

Also in the same paragraph 10 the Court Trustee contends that under Rule 75 only one record can be certified for all appeals from the same order, and he claims that here two are certified. The fact is, of course, that in so far as both Appellants and the Court Trustee have appealed separately as of right from the decree of May 2, 1939, there is but one record. In so far as Appellants have appealed separately by leave of this Court in the above entitled cause there was, of course, a short record necessary to procure docketing in this court, but Appellants' same motion above referred to asks that only the one record stand as the transcript in the matter of both of Appellants' appeals.

(f) In paragraph 11 of his motion and in paragraph D-1 thereof, the Court Trustee refers to a review of orders allowing or disallowing fees "on the original papers." The original papers we suppose would include the various petitions for fee and expense allowances, any answers thereto, transcript of any testimony taken thereon, the Master's Report and the order of court allowing or disallowing the petitions. We submit that all of those original papers will be found in the one consolidated transcript of record which Appellants have requested leave to file in this court.

(g) As to Court Trustee's suggestion to this court that it certify to the Supreme Court the question of the validity of this appeal, we say that if this court thought that this were such a question as should be certified, the court certainly would not choose this case as one in which to do it,

for in this case, if the appeal by leave were dismissed, every question raised in this appeal would, nevertheless, be before the court by the appeal which has been perfected as of right. And by the same token, Appellants submit that there is no point to the Court Trustee's request that the matter of printing the record be deferred until the matter of jurisdiction to allow such an appeal be first determined by the Supreme Court, since, regardless of the decision on that point, the very same questions of the printing would arise in relation to the transcript of record filed in connection with the appeal taken as of right.

Appellants submit that the Court Trustee's motion to dismiss appeal 6986 should be denied, that Appellants' pending motion in respect of the matter of printing and other questions should be forthwith granted to the end that this controversy, taken under advisement by the District Court in December of 1937 and withheld from decree until May 2, 1939, may finally reach the attention of this Court for disposition on the merits.

Vincent O'Brien,
John Merrill Baker,
Tracy W. Buckingham,
Attorneys for Appellants.

Endorsed: Filed September 25, 1939. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the twenty-fifth day of September, 1939, there was filed in the office of the Clerk of this Court in cause No. 7060, an Answer and counter-suggestions of appellants to motion of Court Trustee to dismiss the appeal as to certain appellants, which said answer is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1939.

In the Matter of
Granada Apartments, Inc.,
a corporation,
Debtor.

City National Bank and Trust Company, and others,
Appellants,
vs.
Weightstill Woods, Court Trustee, and others,
Appellees.

No. 7060.

ANSWER AND COUNTER-SUGGESTIONS OF APPELLANTS TO THE MOTION BY THE COURT TRUSTEE TO DISMISS THE APPEAL AS TO CERTAIN OF THE APPELLANTS, ETC.

Now come City National Bank and Trust Company of Chicago, individually and as Successor Trustee under Trust Indenture securing Granada Apartments First Mortgage Bonds, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee acting under deposit agreement for the holders of said bonds, and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman, Appellants, by Vincent O'Brien, John Merrill Baker and Tracy Buckingham, their attorneys, and in opposititon to the said motion of the Court Trustee now pending in the above entitled cause, respectively submit the following:

1. The appeal in the above entitled cause was perfected as of right by filing notice of appeal pursuant to Federal Rules of Civil Procedure and not by leave of this court,

hence there is no petition of record from which the court may ascertain the facts;

2. The decree appealed from, however, is the same as the one from which leave to appeal was granted to the same Appellants in the cause now pending in this court as No. 6986, and we refer the court to the petition for leave to appeal in the latter cause for the detailed facts;

3. Reference to that petition for leave to appeal will disclose that the primary complaint of all the Appellants concerning the decree appealed from in that cause and in this is that the District Court disallowed the claim or petitions of the Appellants, and each of them (namely, City National Bank and Trust Company of Chicago, the Committee, and Defrees, Buckingham, Jones & Hoffman, their counsel) for the allowance of certain fees and expenses claimed by them individually, and not in any representative capacity on behalf of bondholders, depositors or others, and that as to City National, the said decree sustained objections of the Court Trustee to an accounting by it and further sustained the counterclaim against it, individually and as Successor Trustee, filed by the Court Trustee, and in effect denied the allowance of fees to all Appellants by way of attempted recoupment, or for want of equity.

4. In support of his motion that the appeal be dismissed as to City National Bank and Trust Company of Chicago and as to the committee, the Court Trustee relies upon the opinion of this court rendered in a collateral proceeding docketed here as No. 6744 and reported in 104 Fed. (2d) 970. An examination of that opinion will disclose that it is inapplicable to the case at bar. The gist of the decision was

(a) That since the trust deed had been released, the City National Bank and Trust Company of Chicago, as Indenture Trustee, had lost the source of its authority to represent bondholders, and since the securities of the new company on reorganization had been issued and distributed in exchange for bonds deposited with the committee, the Committee no longer had any standing as the representative of depositing bondholders;

(b) That, in any event, neither the Committee nor the Indenture Trustee had the right to be heard upon the question appealed from because, even though creditors, they were not parties to the proceeding

and had not been given leave to intervene to be heard upon the question.

It was, therefore, held that neither the Committee nor the Indenture Trustee had the right under the statute to appeal from an order allowing compensation to the Court Trustee. Nowhere in that opinion, however, is it held that either a claimant or a party for the allowance of administrative expenses may not appeal from an order disallowing its claim or petition, or that parties to an accounting action and a counterclaim cannot appeal from a decrée against them, individually, with respect thereto. Section 77B(c)9 expressly provides for the allowance of reasonable compensatiton for the services rendered and reimbursement for the actual and necessary expenses incurred in connection with the proceeding and the plan by officers, parties in interest, depositaries, reorganization managers and committees, or other representatives of creditors and stockholders and the attorneys or agents of any of the foregoing and of the debtor, and that appeals from orders fixing such allowances may be taken to the court of appeals independently of other appeals in the proceeding and shall be heard similarly, and by virtue of Section 24(a) of the Chandler Act an appeal may arise as a matter of right from any order disallowing a claim.

5. Moreover, in reaching its opinion in the aforementioned case, this court refers to and relies upon an order of the District Court entered October 22, 1937, a copy of which order is hereto annexed as Exhibit "A". That order, among other things, provided that all property of the debtor and of the Court Trustee was to be assigned to the new company, but that there was to be reserved and excepted from such assignment "all claims and rights of action (including matters of account) by Weightstill Woods, as said Trustee, against the Arlington, Inc., a corporation, City National Bank and Trust Company of Chicago, a corporation * * * it being understood and agreed by and between the parties to this agreement that such claims and rights of action are to be retained by said Weightstill Woods, as said Trustee, for the purpose of continuing the prosecution thereof to final disposition in said above-mentioned cause, and are to be subject to the further order in the said court in said above-mentioned

cause." That order further provided "that nothing herein shall be construed as limiting or prejudicing the right of City National Bank and Trust Company of Chicago in its individual capacity, or as Successor Trustee * * * to proceed to an ultimate determination of its claim numbered 9 and its petition for settlement of accounts heretofore filed herein and to have the amount ultimately found due thereon paid pursuant to the plan of reorganization."

And, on October 21, 1937, on motion of the court Trustee himself an order was entered, which is hereto attached and fully set forth as Exhibit "B", in and by which the District Court, among other things, ordered that all evidence taken in respect of the petitions to the court for allowances of fees and expenses to the Committee for services claimed to have been rendered to it by City National Bank and Trust Company of Chicago, as depositary, and for facilities furnished by City National Bank and Trust Company of Chicago and for services of counsel to the Committee or to City National Bank and Trust Company, be consolidated with the accounting proceedings now pending for settlement of accounts between City National Bank and Trust Company of Chicago and the debtor estate, and that all applications for such administrative allowances and all evidence presented pertaining thereto, should be considered as part of the hearing had in open court to be included and considered in preparing the findings and the briefs to be presented to the court and to have disposition as part of said accounting proceedings, namely, the proceedings as so consolidated, which resulted in the decree appealed from, entered May 2, 1939. Indeed, in that very decree the court recites the pleadings and proceedings on which the cause came on to be heard and in doing so, makes express reference to its prior orders, consolidating all of said matters for disposition, including the consolidation order immediately above referred to.

And again, on October 25, 1937, the court, in making its order as to administrative expenses and allowances, provided therein, among other things, that the consideration of the petition of the bondholders' committee for the allowance of fees and expenses and the petition of Defrees, Buckingham, Jones & Hoffman for allowances of counsel fees, is postponed to await the coming in of briefs which have been directed to be filed.

From the record, therefore, it is apparent that the ques-

tion of administrative allowances to the committee and to the Indenture Trustee, and the questiton as to allowance of all amounts claimed by them individually, and the accounting matters and counterclaim was reserved throughout the case and was not disposed of until the entry on May 2, 1939, of the decree appealed from, none of which was done until long after the time that the plan of reorganization was actually consummated, the Court recognizing by its former orders and its decree that the consummation of the Plan had not made, nor was it intended to make, as Court Trustee suggests, the City National Bank and Trust Company, the Committee and their counsel no longer parties to that portion of the litigation.

6. Furthermore, the Court Trustee, inconsistently with his own position, has perfected, as of right, an appeal against City National Bank and Trust Company of Chicago and the committee which is here docketed as No. 7061 from the same decree of May 2, 1939 from which he says that Appellants have no right to appeal.

Vincent O'Brien,
John Merrill Baker,
Tracy W. Buckingham,
Attorneys for Appellants.

EXHIBIT A.

IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

In the Matter of Granada Apartments, Inc., a corporation, Debtor.	In Proceedings for the Reorganization of a Corporation. No. 65811.

ORDER.

This cause coming on to be heard upon the petition of the Protective Committee acting under the certain Deposit Agreement dated April 25, 1933, with respect to the First Mortgage 6% Real Estate Gold Bonds of Debtor,

and the Court being fully advised in the premises, It Is Ordered:

1. That counsel for the Committee be and hereby is authorized to cause to be incorporated a corporation under and pursuant to the provisions of "The Business Corporation Act" of the State of Illinois, the corporate name of which is to be "The Granada, Inc." or such other name as may be selected by counsel for the Committee. Said corporation, when so organized, to be and to constitute the "Reorganized Company" designated in the Plan of Reorganization of Debtor heretofore confirmed herein by order entered July 14, 1937; the articles of incorporation of said Reorganized Company to be substantially in the form attached as Exhibit "A" to said petition, which form be and hereby is approved.

2. That the form of By-Laws of the Reorganized Company attached to said petition as Exhibit "B" be and hereby is approved and the persons who shall constitute the first Board of Directors of the Reorganized Company be and hereby are authorized to adopt said By-laws in form substantially as set forth in said Exhibit "B" to said petition.

3. That the form of the Trust Agreement attached as Exhibit "C" to said petition be and hereby is amended as follows:

(a) By adding as a first sentence to Section 4 the following:

> "The Participation Certificate shall be registered on the books of the Trustees kept for that purpose at the office of the Depositary and the term 'Holder' of a Participation Certificate or of Participation Certificates shall mean when used herein the then registered holder or holders thereof as shall appear from and by the said books of the Trustees."

(b) By adding a fourth paragraph to Section 4 as follows:

> "The holders of Participation Certificates shall have the same rights with respect to the examination of the books and records of the Trustees as are provided for shareholders of a corporation organized under the laws of the State of Illinois with respect to the books and records of an Illinois corporation."

(c) By striking the second paragraph of Section 10 and by substituting in lieu thereof the following:

"This Agreement and the trust hereby created may also be terminated at any time by written directions signed by a majority in number of the holders of Participation Certificates then of record and outstanding hereunder, which Participation Certificate must also represent a majority in number of the whole shares in the trust, provided that to be effective such written directions shall fix the date of such termination and shall be filed with the Depositary at least ninety (90) days prior to the date so fixed for such termination."

(d) By adding in paragraph 7 of Section 11 immediately following the words "Managing Trustee" the following words: "to superintend the corporate property and affairs."

(e) By adding in paragraph 7 of Section 11 immediately following the words "additional reasonable compensation" the following words and figures: "of not less than two per cent (2%) of the gross annual income of the Corporation."

(f) By adding an additional sentence to paragraph 4 of Section 16 as follows: "Any one of the original Trustees under this Trust Agreement may be, but need not be, appointed as a successor Depositary."

That the form of general assignment and assumption attached as Exhibit "E" to said petition be and hereby is amended by adding a new paragraph immediately following paragraph 5, as follows:

"There is reserved and excepted from this assignment the balance on deposit as of the date hereof to the credit of Weightstill Woods, as said Trustee, with Harris Trust and Savings Bank of Chicago, Illinois, and there is further reserved and excepted from this assignment all claims and rights of action (including matters of account) by Weightstill Woods, as said Trustee, against The Arlington, Inc., a corporation, City National Bank and Trust Company of Chicago, a corporation, Indemnity Insurance Company of North America, a corporation, and the County Treasurer of Cook County, Illinois, it being understood and agreed between the parties to this agree-

ment that such claims and rights of action are to be retained by said Weightstill Woods, as said Trustee, for the purpose of continuing the prosecution thereof to final disposition in said above mentioned cause, and are to be subject to the further order of the said Court in the said above mentioned cause."

4. That the form of Trust Agreement attached as Exhibit "C" to said petition as heretofore amended be and hereby is approved, and Clarence N. Boord, William H. Haight and Weightstill Woods be and hereby are designated as the initial Trustees under said Trust Agreement, the said Trust Agreement to be dated October 30, 1937.

5. The form of the following documents attached as Exhibits "D" to "I", inclusive, to the said petition, being as follows:

(a) Deed from Trustee in these proceedings to the Reorganized Company;

(b) General Assignment and Assumption by and between Trustee in these proceedings and the Reorganized Company, as amended by paragraph 3 of this order;

(c) Notice from Committee to Successor Trustee under trust deed dated September 1, 1928, securing First Mortgage 6% Real Estate Gold Bonds of Debtor;

(d) Notice from Committee to Successor Trustee under trust deed dated September 1, 1928, securing Second Mortgage 6% Real Estate Gold Bonds of Debtor;

(e) Release of trust deed dated September 1, 1928, securing First Mortgage 6% Real Estate Gold Bonds of Debtor and satisfaction of decree entered December 18, 1936, in the Superior Court of Cook County, Illinois, in Cause No. 519151;

(f) Release of trust deed dated September 1, 1928, securing Second Mortgage 6% Real Estate Gold Bonds of Debtor;

be and hereby is approved.

6. That the respective parties to the said Trust Agreement be and hereby are authorized, empowered and directed to forthwith execute, acknowledge and deliver said Trust Agreement in form substantially as set forth in said Exhibit "C" to said petition, and to do any and all acts necessary and proper to carry out and consummate the matters and things therein contained.

7. That the Committee be and hereby is authorized and directed to forthwith sign the respective notices to the respective Trustees in form substantially as set forth in said respective Exhibits "F" and "G" to said petition, and cause the same to be delivered, and in the event said Successor Trustees or either of them shall fail, neglect or refuse to execute, acknowledge and deliver the said respective instruments referred to in said respective notices within five (5) days after the receipt thereof, then and in that event Carl R. Chindblom be and hereby is authorized and directed to execute, acknowledge and deliver to the Committee said instruments pursuant to said order entered July 14, 1937, in substantially the respective forms as set forth in said Exhibits "H" and "I" attached to said petition.

8. That Weightstill Woods, as Trustee, appointed in these proceedings, be and hereby is authorized, empowered and directed to forthwith execute, acknowledge and deliver to the Reorganized Company said deed in substantially the form as set forth in Exhibit "D" attached to said petition.

9. That Weightstill Woods, as Trustee, appointed in these proceedings, be and hereby is authorized, empowered and directed to execute, acknowledge and deliver to the Reorganized Company said instrument of General Assignment and Assumption in substantially the form set forth in said Exhibit "E" attached to said petition as above amended.

10. That the proper officers of the Reorganized Company upon receipt by it of said instrument of General Assignment and Assumption so executed by the said Weightstill Woods, as Trustee in these proceedings, be and hereby are authorized, empowered and directed, for and on behalf of said Reorganized Company to execute, acknowledge and deliver said instrument of General Assignment and Assumption and to deliver one executed original thereof to the said Weightstill Woods, as said Trustee in these proceedings.

11. That Weightstill Woods, Trustee in these proceedings, be and hereby is authorized, empowered and directed, contemporaneously with the delivery by him of the said deed to the Reorganized Company, to turn over to the Reorganized Company possession of the property and assets of the Debtor then held by him as said Trustee, and shall thereupon within fifteen (15) days there-

after file herein his final report and account as said Tsustee in these proceedings.

12. That City National Bank and Trust Company of Chicago be and hereby is designated as Depositary under said Trust Agreement and as the agency pursuant to Section C of the Plan of Reorganization, to which shall be surrendered the securities and instruments of discharge and satisfaction as therein set forth.

13. That the Trustees under said Trust Agreement be and hereby are authorized and directed to deliver to said Depositary the Participation Certificates issuable under said Trust Agreement, and said Depositary be and hereby is authorized and directed to take such steps as may be necessary to effect the distribution of such Participation Certificates in the number of shares and to the persons entitled thereto, and in the manner as provided in the said Plan of Reorganization, but only upon the approval and written direction of the Trustees.

14. That the Reorganized Company be and hereby is authorized and directed to forthwith cause to be issued all of its presently authorized shares of capital stock to the Trustees under said Trust Agreement.

15. That all costs, fees, taxes and expenses incurred in connection with the consummation of the Plan of Reorganization and in connection with the carrying into effect of the matters and things hereinabove set forth shall be paid forthwith, without further order of this Court, by Weightstill Woods, as Trustee in these proceedings, from funds of the Debtor in his possession until such time as he shall turn over the property and assets of the Debtor now in his possession to the Reorganized Company, and thereafter such costs, fees, taxes and expenses so incurred shall be paid by the Reorganized Company without further order of this Court.

16. That nothing herein shall be construed as limiting or prejudicing the right of City National Bank and Trust Company of Chicago in its individual capacity or as Successor Trustee under Trust Deed securing the First Mortgage 6% Real Estate Gold Bonds of Debtor, to proceed to an ultimate determination of its claim numbered 9 and its petition for settlement of accounts heretofore filed herein and to have the amount ultimately found due thereon paid pursuant to the Plan of Reorganization; and nothing herein contained shall be construed as an adjudication or decision of any issues raised by the an-

swer and counterclaim by Weightstill Woods, Trustee in these proceedings, now pending to said claim numbered 9 and petition by City National Bank and Trust Company of Chicago for a settlement of its accounts.

17. That this Court reserve jurisdiction with respect to the matters and things herein contained and with respect to all matters and things hereafter arising in connection with the consummation of the Plan of Reorganization not heretofore determined, and for the purpose of amplifying, extending, modifying or amending this order without further notice.

Enter:

Barnes,
Judge.

Dated October 22, 1937.

EXHIBIT B.

IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

In the Matter of Granada Apartments, Inc., a corporation, Debtor.	Proceedings for Reorganization. No. 65811.

ORDER ON MOTION BY COURT TRUSTEE TO CONSOLIDATE CERTAIN HEARINGS, RE CITY NATIONAL BANK AND TRUST COMPANY.

This cause coming on to be heard regularly upon the trial call of this Court and all counsel of record being present and represented in open Court, and the Court Trustee having presented orally and in writing filed in this cause his motion to obtain this order and other counsel having expressed their views and the Court being fully advised in the premises:

It Is Ordered that all evidence taken before the Referee and the application and petition made to the Court, for allowance of fees and expenses to the Bondholder's Com-

mittee for the services claimed to have been rendered to it by the City National Bank and Trust Company as depositary and for facilities furnished by the City National Bank and Trust Company for Committee use and for services of counsel to the Committee or to City National Bank and Trust Company be and hereby are consolidated with the accounting proceedings now pending for settlement of accounts between City National Bank and Trust Company and Debtor Estate.

It Is Further Ordered that all application for such administrative allowance and all evidence presented pertaining thereto shall be considered as part of the hearing which has been had in open Court, to be included and considered in preparing the findings and the briefs to be presented to the Court, and to have disposition as part of said accounting proceedings now pending in this Court.

Enter:

.....

District Judge.

Dated: October 21, 1937.

Endorsed: Filed September 25, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the twenty-sixth day of September, 1939, there was filed in the office of the Clerk of this Court in cause No. 6986, a Reply by Court Trustee to Counter-suggestions by appellant, etc., which said reply is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1939.

In the Matter of
Granada Apartments, Inc.,
Debtor. } No. 6986.

REPLY BY COURT TRUSTEE TO THE COUNTER-SUGGESTIONS BY APPELLANTS; AND CONFIRMATION BY COURT TRUSTEE OF HIS MOTION TO DISMISS APPEAL 6986.

Weightstill Woods as Court Trustee makes reply:

1. The substance of the counter-suggestions is that this Court of Appeals should be and remain out of step with all the other Circuit Courts of Appeal, and out of step with the spirit of simplicity behind the new Federal rules, and out of step with that uniformity which is necessary for the speedy disposition of litigation in our National Courts.

2. The counter-suggestions entirely fail to meet the issue, that the modes of appeal to this court always have been mutually exclusive; so that this court now has the duty to dismiss either Appeal 6986 or Appeal 7060, or it must overrule a long line of decisions which are cited at page 9 of the motion by the Court Trustee to dismiss Appeal 6986.

3. After the Dickinson case was passed upon by this court, a petition for Writ of Certiorari to review the same, was filed at Washington and is there now pending as cause 386 to the October Term, 1939, for disposition of present question, by the Supreme Court of the United States. It is well known that a legal question of nation wide importance, to be decided for the duration of the present rules of court, will have a more satisfactory disposition by the Supreme Court, when it is presented at the same time upon several different appeals.

4. Paragraphs 2 (c) and 3 (a) of the counter-suggestions collide with paragraph 3 (d) thereof; because if the points raised by the motion to dismiss the appeal are the

same in substance as the matter of the Answer by Court Trustee filed June 17, 1939 to petition for leave to appeal, then the question now before the court was presented to this court of appeals and remains before this court a long time before any record was filed on July 19th 1939.

5. The statement at page 6 of counter-suggestions that there is in fact but one record, is a perversion of truth which defeats the whole purpose and effect of rules 73 and 75, and utterly ignores the motion made by appellants, for a consolidation of two records, and for direction as to printing.

6. Whatever delay there may have been in this cause in the District Court or in this Court, has been occasioned by the efforts of the appellants to bring marginal parties and immaterial matters here before this court, in Appeal 6744 which was dismissed because appellants had no interest, and Appeal 6986 which is sheer duplication and surplusage, producing only confusion.

7. The rules made by the Supreme Court under authority of Congress, most emphatically are a limitation abrogating former rules by this court. Any rules existing or to be made by the Court of Appeals must be consistent with the Supreme Court rules about appeals, forbidding this Court of Appeals to make rules upon the same subject.

8. Federal Rule 73 (a) is the same as Illinois Civil Practice Act Sec. 76. Under that statute the Supreme Court of Illinois has ruled that the notice of appeal must be filed in the trial court within the time prescribed; that making a motion within the time in the appeal court for leave to appeal does not give jurisdiction and that such an attempt to appeal must be dismissed.

Johnson v. *Cook County,* 368 Ill. 160, 13 N. E. (2d) 169.

The ruling is in point and pursuasive on the facts at bar.

9. The statements by appellants that inasmuch as the transcript contains copies of the "original papers", it follows that the hearing is to be upon "original papers"; is a perversion of words and the rules; and is utterly belied by the desire of appellants for direction to have the record printed.

10. Your Honors will notice that everything said and presented in the motion by the Court Trustee to dismiss certain appellants in Appeal 7060, equally applies to the same appellants in Appeal 6986.

11. The Court Trustee strenuously insists that no direction as to printing be made until preliminary motions, as to jurisdiction over appeal and jurisdiction of parties to appeal, have been determined and ended; so that only the lawful appeal and only the true parties will be shown in the printed record, and so that the confusion occasioned by the needless Appeal and by defunct persons who are sought to be parties brought forward by appellants, will be excluded from the essential matter for consideration by this court of the merits of this controversy.

12. Wherefore the Court Trustee confirms his motion to dismiss Appeal 6986; or that your Honors of your own motion, will submit the matter to the Supreme Court at Washington, there to be determined along with the Dickinson case, No. 386 in that Court.

Respectfully submitted,

Weightstill Woods,
Court Trustee.

Received copy of foregoing Reply by Court Trustee to counter-suggestions of appellants Vincent O'Brien and Associates,

By Vincent O' Brien.
Mort D. and Frank Goldberg,
By: Mort D. and Frank Goldberg.

Endorsed: Filed September 26, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the twenty-seventh day of September, 1939, there was filed in the office of the Clerk of this Court in cause No. 7060, a Reply by Court Trustee to the answer and counter-suggestions by appellants, etc., which said reply is in the words and figures following, to-wit:

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1939.

In the Matter of
Granada Apartments, Inc.,
a corporation,
Debtor.

City National Bank and Trust Company, and others,
Appellants
vs.
Weightstill Woods, Court Trustee, and others,
Appellees.

No. 7060.

REPLY BY COURT TRUSTEE TO THE ANSWER AND COUNTER-SUGGESTIONS BY APPELLANTS: AND CONFIRMATION BY COURT TRUSTEE OF HIS MOTION TO DISMISS APPEAL 7060 AS TO CERTAIN APPELLANTS.

The counter-suggestions for supposed appellants, when rightly read fully confirm the accuracy and sufficiency of the motion by the Court Trustee.

The order dated October 21st 1937 which is Exhibit "B" to counter-suggestions, mentions City National Bank & Trust Company only individually; and the order which is Exhibit "A" as set forth in paragraph 5 of counter-suggestions, does the same thing. There is nothing in either order nor in the counter-suggestions, to show any power or right of appellants in any trust capacity, to be parties to the litigation.

Furthermore, if either of said orders or any other portion of the record did show any right of City National or Committee to be parties to this claim No. 9 in any trust capacity, the same would be an attempt to relitigate the

very same question which was presented and definitely decided in said former Appeal 6744. Appellants will not be permitted at this time to bring forward any matter of record or other facts which they could have presented in that former appeal upon the same question.

Insofar as the order dated October 22nd 1937 which is Exhibit "A" to the counter-suggestions, recognizes the existence of a Committee, said order is not dealing with the Committee constituted by the deposit agreement, which here attempts to be appellant. The same counsel who now presents said counter-suggestions, have taken a position in the District Court (in a claim they have recently there filed and now pending and set for October 20th 1939) for disposition before the Special Master in the District Court that said Committee mentioned in Exhibit "A" was constituted by court order July 14th 1939, and is *not the Committee constituted by the deposit agreement which here seeks to be appellant.*

Wherefore, the Court Trustee confirms and urges his motion for dismissal.

Respectfully submitted,
Weightstill Woods,
Court Trustee.

Received copy of foregoing Reply by Court Trustee to counter-suggestions of appellants Vincent O'Brien and Associates,

By: Defrees, Buckingham, Jones & Hoffman,
(Vincent O'Brien)
Mort D. and Frank Goldberg,
By: Mort D. Goldberg.

Endorsed: Filed September 27, 1939. Frederick G. Campbell, Clerk.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the third day of October, in the year of our Lord one thousand nine hundred and thirty-nine, and of our Independence the one hundred and sixty-fourth.

And afterwards, to-wit: On the fourth day of October, 1939, the following further proceedings were had and entered of record, to-wit:

Wednesday, October 4, 1939.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank and Trust Company of Chicago, etc., et al.,
Appellants,

6986 *vs.*

Weightstill Woods, etc., et al.,
Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the Court that the counter-motion of Weightstill Woods as Court Trustee to dismiss this appeal be, and it is hereby, denied.

And on the same day, to-wit: On the fourth day of October, 1939, the following further proceedings were had and entered of record, to-wit:

Wednesday, October 4, 1939.

Court met pursuant to adjournment.

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank and Trust Company of Chicago, etc., et al.,
Appellants,
7060 *vs.*
Weightstill Woods, etc., et al.,
Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered that the motion of Weightstill Woods as Court Trustee to dismiss certain appellants out of these proceedings be, and it is hereby, denied, without prejudice to the right to renew same at the hearing on the merits.

And on the same day, to-wit: On the fourth day of October, 1939, the following further proceedings were had and entered of record, to-wit:

Wednesday, October 4, 1939.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank and Trust Company of Chicago, etc., et al.,
6986 *Appellants,*
7060 *vs.*
Weightstill Woods, etc., et al.,
Appellees.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause coming on to be heard upon motion of City National Bank and Trust Company of Chicago, individually and as Successor Trustee under indenture securing Granada Apartments First Mortgage Bonds, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee, acting under the Deposit Agreement dated April 25, 1933, with respect to said bonds, and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metallus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman, Appellants herein, and the Court being fully advised in the premises, It Is Ordered:

(a) That the appeal of Appellants allowed by this Court and now pending in this Court as the above entitled cause number 6986, and the appeal of Appellants taken to this Court pursuant to notice of appeal heretofore filed in the District Court of the United States for the Northern District of Illinois, Eastern Division, and now pending in

this Court as cause number 7060, be consolidated as cause number 6986;

(b) That the transcript of record now filed with the Clerk of this Court in the above entitled cause number 6986 and the transcript of record now filed with the Clerk of this Court in cause number 7060, be consolidated and stand as the single consolidated transcript of record in both of said appeals as so consolidated;

(c) That the Clerk of this Court be, and he is, directed to cause to be printed only such portions of the single consolidated transcript of record as are designated in "Exhibit A" attached to the said above mentioned motion and made a part thereof, including the printing of a condensed and narrative statement of the transcript of proceedings now filed with the Clerk of this Court in cause number 7060 and of a summary statement of certain exhibits attached to said condensed and narrative statement, in lieu of the printing of said transcript of proceedings and said exhibits in full, and that the said single consolidated transcript of record as so now filed and the said single printed transcript of record shall stand as the transcript of record in both of said appeals as so consolidated, with leave to any party where necessary or desirable to refer by citation to the transcript by page as well as to the printed transcript; and

(d) That Appellants be permitted to file one brief and one reply brief with respect to both appeals as so consolidated, and that each of the Appellees be permitted to file one brief with respect to both appeals as so consolidated, the said respective briefs and reply brief to stand as the briefs and reply briefs in both of said appeals as so consolidated.

And afterwards, to-wit: On the eighth day of November, 1939, there was filed in the office of the Clerk of this Court, in cause No. 6986, a renewal of counter motion to dismiss appeal 6986, etc., which said renewal of counter motion is in the words and figures following, to-wit:

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IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, 1939.

No. 6986

In the Matter of
GRANADA APARTMENTS, INC.,
Debtor.

RENEWAL OF COUNTER MOTION TO DISMISS APPEAL 6986.
ANSWER TO MOTION FOR CONSOLIDATION.

WEIGHTSTILL WOODS,
As Court Trustee.

THE DUNHORP-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

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IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, 1939.

No. 6986

In the Matter of
GRANADA APARTMENTS, INC.,
Debtor.

RENEWAL OF COUNTER MOTION TO DISMISS APPEAL 6986.

Weightstill Woods as court trustee, presents the following answer and objections to all petitions and motions by Appellants in this court, and respectfully makes motion that appeal 6986 as allowed by this court, be dismissed for want of power and jurisdiction for this court to allow such an appeal.

Respectfully submitted,

WEIGHTSTILL WOODS,
As Court Trustee.

ANSWER AND OBJECTIONS TO THE APPEAL AND TO ALL MOTIONS AND PETITIONS BY THE APPELLANTS AND SUGGESTIONS FOR DISMISSAL OF APPEAL.

Weightstill Woods as Court Trustee respectfully says:

1. Your objector is court trustee in proceedings 65811, in the District Court of the United States at Chicago, which suit was filed April 19, 1937, for the reorganization of Granada Apartments, Inc., debtor, an Illinois corporation, and remains pending.

2. That on May 2, 1939 in said proceedings, a decree was entered in said District Court to dispose of an accounting between City National Bank and Trust Company and others, and said Court Trustee for the debtor.

3. That on June 1, 1939, said City National Bank and Trust Company and others, filed in said proceedings in the District Court, their notice of appeal from said decree, and on June 8, 1939, filed their Designation of Points and Praecipe for Record, in which they stated that said record was to be filed on or before July 9, 1939, as an appeal in the United States Circuit Court of Appeals for the Seventh Circuit at Chicago, Illinois; which was done pursuant to Rule 73 established by the Supreme Court to govern appeals, and pursuant to Section 25 of the Chandler Act in force June 22, 1938. More than $500 is involved in said appeal. On July 7, 1939, appellants secured an order in District Court, extending time until August 19, 1939, for docketing said case on appeal; and within said time did so docket said appeal in this Court of Appeals as case No. 7060.

4. That on June 10, 1939, said Court Trustee also, in the same manner, took an appeal from portions of said decree dated May 2, 1939, by his notice filed in said District Court pursuant to said rules and statute. More than $500 is involved in said appeal. In due course said appeal was docketed as No. 7061 in the Court of Appeals.

5. That on June 12, 1939 (more than forty days after decree of May 2, 1939), said City National Bank and Trust Company and others, filed as cause 6986 in said United States Circuit Court of Appeals for the Seventh Circuit, their new petition and exhibits, running more than one hundred typewritten pages, seeking to have said Appellate Court by its order grant an additional appeal, upon the same grounds to the same parties and from the same decree dated May 2, 1939, and they expressly stated to Court of Appeals that more than $500 is involved.

6. That in opposition to said appellate petition filed by City National Bank and others on June 12, 1939, in said Circuit Court of Appeals, your objector as Court Trustee filed an answer, which asked that the prayer of said appellate petition by City National Bank and Trust Company and others be denied.

7. That the Circuit Court of Appeals by order June 22, 1939, allowed an appeal, and later issued a citation.

8. That on June 26, 1939 said appellants in 6986 filed in the District Court, a second praecipe for record mentioning 60 items, in substance a repetition of said praecipe filed June 8, 1939 by them for their prior appeal dated June 1st, and at the end thereof stated that the record in 6986 is to be filed in Court of Appeals on July 22, 1939. Later they sought and obtained an order by Court of

Appeals to enlarge the filing time until September 16, 1939, and filed a record within that time.

9. Objector says that said orders and citation by Circuit Court of Appeals, is an attempt to revive former practice and procedure, which has been abolished by Act of Congress and the rules established by the Supreme Court for the conduct of appeals; and that such attempted revivor is contrary to paramount law. Such revivor would set at naught the years of effort by Congress, the Rules Committee, the Supreme Court, and the profession generally, which have labored to establish simple and uniform procedure for appeals.

10. It is obvious that the allowance of said appeal in said manner by the Court of Appeals, introduces duplication, repetition, surplusage and confusion into the record of said case in the District Court and the Court of Appeals. That is prejudicial to the appeal of right previously taken, and defeats primary rights vested in the Court Trustee. Under Rule 75 only one record can be certified for all appeals from the same order. Here two are certified. Immediate and irreparable damage results to the appeal regularly and rightfully taken by objector the Court Trustee, as No. 7061.

11. Objector states that any attempt that may be made to justify said appellate petitions and orders, by reference to Section 250 of Chandler Act, is unfounded because (1) no intention exists and no effort is made to review any part of said decree dated May 2, 1939, "upon the original papers"; and (2) such an appellate allowance of appeal is not taken "in the same manner" nor "within the time provided for appeals by this act" (Chandler Act, Section 250); and (3) more than the sum of $500 is involved (Section 24 of Chandler Act).

12. On November 6, 1939 as cause 386 the Supreme Court at Washington granted a writ of certiorari to review the ruling of this court in the Dickinson case (104 F. 2d 771). That ruling was made under circumstances similar to the situation shown by this record.

In the Dickinson case this Court of Appeals took jurisdiction by allowing an appeal, contrary to the rules mentioned below on page 6, and contrary to the decisions of all other circuit courts of appeal, as shown below at page 9. The rules made by the Supreme Court under authority of Congress, most emphatically are a limitation abrogating any inconsistent former rules by this court.

Your Honors will notice that everything said and presented in the motion by the Court Trustee to dismiss certain appellants in Appeal 7060, equally applies to the same appellants in Appeal 6986.

The Court Trustee strenuously insists that printing be not done until preliminary motions, as to jurisdiction over appeal and jurisdiction of parties to appeal, have been determined and ended, so that only the lawful appeal and only the true parties will be shown in the printed record, and so that the confusion occasioned by the needless appeal and by defunct persons who are sought to be parties brought forward by appellants, will be excluded from the essential matter for consideration by this court on the merits of this controversy.

13. Wherefore objector says that all proceedings in 6986 should be dismissed for want of authority and jurisdiction, with costs to be assessed against the appellants.

Respectfully submitted,

WEIGHTSTILL WOODS,
As Court Trustee.

14. WRIGHTSTILL WOODS being sworn, states that he has prepared and has read the foregoing answer and objections, and that the factual statements therein made are true, to the best of his knowledge and belief.

.....

Subscribed and sworn to before me this November 8, 1939.

.....

Notary Public, Cook County, Illinois.

ENLARGED SUGGESTIONS AND AUTHORITIES IN SUPPORT OF COUNTER MOTION TO DISMISS APPEAL 6986, AND IN SUPPORT OF ANSWER AND OBJECTIONS TO CONSOLIDATION.

A. The order by the Supreme Court for General Orders in Bankruptcy in effect since February 13, 1939, provides that said orders:

> "shall govern all proceedings then pending to which its provisions are applicable except to the extent that in the opinion of the court its application to such proceedings would not be practicable or would work injustice."

and order "No. 36 Appeals" provides:

> "Appeals shall be regulated, except as otherwise provided in the Act, by the rules governing appeals in civil actions in the courts of the United States, including *the rules of civil procedure for the District Courts of the United States.*"

B. Federal Court Rule 73, established by the Supreme Court for the District Courts of the United States, provides the manner and time for taking an appeal and for docketing an appeal. This supplants former practice, which is abolished.

The time here sought to be allowed to appellant by this court to September 16, 1939 for filing the transcript, exceeds the 90 days maximum under Rule 73g, after appeal taken in the District Court by appellants on June 1, 1939. *By the Statute only the District Court may enlarge the time.* This Circuit Court of Appeals is not given that power by the statute. Rule 75 provides that there may be only one record, for all appeals from the same order. The appeals now sought to be consolidated are from the same order dated May 2, 1939.

C. Section 250 and 498 of the Chandler Act, are not additional machinery for appeals. (Your Honors so ruled on former appeal between said parties, interpreting similar language of 77B.) *Re Granada,* 104 F. 2d 970 at 973, where this Court of Appeals says:

> "The words 'but appeals from orders fixing such allowances may be taken to the circuit court of appeals, and independently of other appeals in the same proceeding and shall be heard summarily' merely designate a class of orders from which an appeal may be taken without in anywise enlarging the class of persons who are entitled to appeal."

(The Supreme Court denied a petition for writ of certiorari on November 6, 1938 as cause No. 469.)

Those sections merely say that appeals about allowances for compensation or reimbursement "shall be heard summarily upon the original papers" and may be taken "independently of other appeals in the same proceeding." It was necessary to use the alternate language "be taken to and allowed by the Circuit Court of Appeals" because Section 24 of the Act allows appeals for less than $500 only by discretion of the Court of Appeals.

D. At bar we do not have that kind of case. The petitions for appellants all show to this court, that more than $500 is involved in this court, and show that an appeal of right separately was taken by Notice of Appeal filed June 1, 1939 in the District Court. Under these facts this court lacks jurisdiction to allow an appeal. Those facts exclude such jurisdiction. Also:

1. No intention exists and no effort is made to review any part of the order dated May 2, 1939, "on the original papers."

2. Such an appellate allowance of appeal has not been taken "in the manner" nor "within the time" provided for appeals by Section 250 of the Chandler Act.

3. Only the District Court may extend the time for filing the record on appeal. Rule 73g. It did not enter the order therefor.

F. The petition for appellants filed July 20th (par. 8) speaks of "physical impossibility and unnecessary duplication." Your objector pointed to that fact by answers filed June 17, 1939 to the first petition here for this appeal. Repetition, surplusage and confusion are the result of the revival of the old double procedure.

G. Furthermore all the old uncertainty about appeals will be revived, if this court allows appeals when $500 or more is involved. All the work done by Congress, by the Supreme Court, by the Rules Committee, and by the profession for many years, seeking to simplify and unify appellate procedure, would be swept away by such revivor of former practice.

H. Objector submits that the order by Court of Appeals dated June 22, 1939, for an allowance of appeal 6986, is void for want of authority. It conflicts with the paramount law. That order should be vacated. The order dated July 21, 1939, for filing time should also be vacated. All the petitions by appellants to this court should be denied. The citation should be quashed. The petition to this court for an appeal, dated June 12, 1939, should be dismissed for want of jurisdiction in this court to entertain the same under existing law applicable to this case. The order dated October 4 should be vacated.

I. In the alternative objector suggests that this Court of Appeals should submit the question of validity of appeal 6986 to the Supreme Court at Washington, as a preliminary question before judgment, under Rule 39 of the Supreme Court. The public interest will be promoted by prompt settlement in that court of this question of the jurisdiction of this court to allow appeals.

J. Objector asks that the matter of printing the record be deferred until the matter of jurisdiction to allow appeals be first finally determined; and that objector

have leave to examine the record fully thereafter, and to submit his suggestions as to matter for printing.

THE WRONG MANNER OF APPEAL WILL BE DISMISSED.

Union Trust Company of Maryland v. *Townsend*, 101 F. 2d 903 at 914, C. C. A. 4.
Bender v. *Davis*, 365 Ill. 389.

Federal Rule 73 (a) is the same as Illinois Civil Practice Act Sec. 76. Under that statute the Supreme Court of Illinois has ruled that the notice of appeal must be filed in the trial court within the time prescribed; that making a motion within the time in the appeal court for leave to appeal does not give jurisdiction and that such an attempt to appeal must be dismissed. *Johnson* v. *Cook County*, 368 Ill. 160, 13 N. E. (2d) 169. The ruling is in point and pursuasive on the facts at bar.

THE METHODS OF REVIEW ARE MUTUALLY EXCLUSIVE.

Arnold v. *Equitable Life Assurance Society and Three Other Cases*, C. C. A. 7, 100 F. 2d 621 at 622.
England v. *Ducasse* (C. C. A. 9, Bankruptcy Law Service 51828).
Wayne U. G. Co. v. *Owens I. G. Co.*, C. C. A. 4, 83 F. 2d 98, 84 Fed. 2d 965.
F. P. Newport Corporation, 93 F. 2d 630 at 633, C. C. A. 9.
London v. *O'Dougherty*, 102 F. 2d 524 at 525, C. C. A. 2.
Winton Shirt Corporation, 104 F. 2d 777 at 779, C. C. A. 3.
3 Ohlinger Federal Practice 949, 953, 956.
Finletter Reorganizations, page 611.
Bender v. *Davis*, 365 Ill. 389.
Francke v. *Eadie*, 301 Ill. App. 254, 259.

The one opposing decision should be disregarded, for the additional reason that the Supreme Court granted a writ of certiorari as cause No. 386 on November 6, 1939. (*Albert Dickinson Co.*, 104 F. 2d 771 at 779.)

Received copy of the foregoing counter motion, answer, objections, authorities and suggestions.

VINCENT O'BRIEN AND ASSOCIATES,

By.....

MORT D. AND FRANK GOLDBERG,

By.....

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Endorsed: Filed November 8, 1939. Frederick G. Campbell, Clerk.

And on the same day, to wit: On the eighth day of November, 1939, there was filed in the Office of the Clerk of this Court in Cause No. 7060, a Renewal of Motion by Court Trustee, which is in the words and figures following, to wit:

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IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, 1939.

In the Matter of GRANADA APARTMENTS, INC., a Corporation, Debtor.	
CITY NATIONAL BANK AND TRUST COMPANY, and others, *Appellants*, vs. WEIGHTSTILL WOODS, Court Trustee, and others, *Appellees*.	No. 7060.

RENEWAL OF MOTION BY COURT TRUSTEE.

Weightstill Woods as Court Trustee makes motion again that certain appellants

City National Bank and Trust Company of Chicago *as Successor Trustee under indenture securing Granada Apartments First Mortgage Bonds;*

Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, *as Members of the Protective Committee, acting under the Deposit Agreement dated April 25, 1933, with respect to said bonds,*

be dismissed out of said proceedings, and that said appeal be dismissed as to them by order of this court;

For reasons set forth in suggestions herewith.

The Court Trustee asks further time to consider the condensed Narrative Statement of the Evidence, and leave thereafter to file his suggestions as to matter for printing.

Respectfully submitted,

WEIGHTSTILL WOODS,
as Court Trustee.

ENLARGED SUGGESTIONS BY THE COURT TRUSTEE IN SUPPORT OF RENEWAL OF MOTION TO DISMISS AS TO CERTAIN APPELLANTS.

1. Named appellants (successor trustee and Committee) were in this court on former appeal, case 6744, which is reported 104 F. (2d) 970, suing this Court Trustee.

Since the original motion was made, appellants have sought and have been denied a writ of certiorari at Washington. That court refused to review case 6744.

2. That appeal was dismissed because named appellants are defunct and no longer have legal existence.

3. By opinion in that appeal Your Honors rule at page 972:

> "It would seem, on general principles, that neither the bank trustee, nor the Committee, had any interest in the proceedings after the plan of reorganization, approved by the court, had been consummated, with the exception of the former's claim No. 9, which we shall assume was pending at the time of the entry of the order appealed from. The deed of trust from which the former received its authority, and the bonds deposited with the latter and from which it received its authority, were, as heretofore recited, cancelled and delivered to the reorganized company and thus the basis upon which both appellants participated in the reorganization proceedings were destroyed."

That ruling by Your Honors was based upon your finding in the same appeal, between these same parties as follows:

> "The new corporation, Granada Apartments Hotel Corporation, was issued a charter by the State of Illinois October 30, 1937, and on November 1, 1937, the trustee executed and delivered to it a deed to the real estate and an assignment of all the personal

property of the debtor, as well as possession, management, and control of the debtor's property and affairs, excepting only cash in bank and rights of action as directed by the court in its order of October 22, 1937. In conformity with the plan, the bondholders and other creditors of the debtor were issued securities of the new corporation in lieu of those of the debtor. The original trust deed by which the trust company received its authority, as well as the committee representing bondholders whose bonds were secured thereby, was cancelled and released of record in the Recorder's office of Cook County, Illinois, on February 10, 1938, surrendered to the court trustee, and by him delivered to the new corporation."

4. A petition for writ of certiorari was denied by the Supreme Court at Washington as cause 469, on November 6, 1939, refusing to review said appeal 6744.

5. Thereby it is adjudicated on former appeal, that said bank trustee and committee are defunct and have no legal existence since Granada plan was confirmed July 14, 1937. All shown by records of this court.

6. Wherefore the court trustee respectfully asks for an order of dismissal pursuant to the motion herewith.

And prays a reasonable time for examination of record before printing is done.

Respectfully submitted,

WEIGHTSTILL WOODS,
as Court Trustee.

Received copy of foregoing motion and suggestions.

VINCENT O'BRIEN AND ASSOCIATES,

By_____

MORT D. AND FRANK GOLDBERG,

By_____

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And afterwards, to-wit: On the sixteenth day of November, 1939, there was filed in the office of the Clerk of this Court, in cause No. 6986, the Answer and response of City National Bank & Trust Co. to Court Trustee's renewed motions, which said answer is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1939.

In the Matter of Granada Apartments, Inc., a corporation, Debtor.	
City National Bank and Trust Company of Chicago, Individually and as Trustee, etc., *et al.*, *Appellants*, *vs.* Weightstill Woods, Court Trustee, *et al.*, *Appellees.*	No. 6986.

THE ANSWER AND RESPONSE OF CITY NATIONAL BANK AND TRUST COMPANY, INDIVIDUALLY AND AS TRUSTEE, THE COMMITTEE, AND COUNSEL TO THE COURT TRUSTEE'S RENEWED MOTIONS.

The Court Trustee in Bankruptcy accuses us of a desire to confuse the Court as to what the Granada litigation is about, and says that in order to create that confusion we have bombarded the Court with a barrage of motions. We do not deny that there has been a barrage of motions, but insist that we, as well as the Court, have been on the receiving end.

In order to be sure that there does not exist in the mind of the Court that confusion of which we are accused of having the desire to create, we believe it would be helpful

to the Court if we filled in each Granada case here pending this one comprehensive answer to the Trustee's three most recent motions and in that answer review the various motions made and show their purpose.

We further suggest that if, after reading our answer, any confusion exists in the Court's mind as to the purpose of the motions we have made or as to the propriety of granting those motions, the Court grant oral argument pursuant to its Rule 19.

On May 2, 1939, a decree was entered below which disposed of issues which arose on the final report and account of City National Bank and Trust Company of Chicago, as Indenture Trustee, the claim of City National Bank and Trust Company of Chicago on its own behalf, the petitions for fees and expenses of administration by the Committee and its counsel, the objections of the Court Trustee to all of the foregoing, and upon the counterclaim of the Court Trustee. All of the issues so raised were heard at the same time.

The Indenture Trustee, the Committee, and its counsel perfected an appeal *as of right* from that decree, even as to the portion relating to fees and expenses of administration; for it was felt that under existing authorities that was the mode which was to be followed.*

Within the time allowed for the perfection of appeal *by leave,* this Court held in the Dickinson case (104 F2. 771) that appeals from orders granting or denying fee allowances would not lie as a matter of right. To comply with that ruling, and not, as the Court Trustee indicates, for the purpose of complicating the matter or confusing the Court, we filed a petition for leave to appeal, which was opposed by the Court Trustee but which was nevertheless allowed.

Our appeal taken as of right is here docketed as No. 7060, and the one perfected by leave of this Court is here docketed as No. 6986.

In relation to No. 7060 we filed with the Clerk of the District Court a designation of record which, together with an additional designation filed by the Court Trustee, specified the entire record of the proceedings below. Pursuant to those designations the Clerk of the District Court prepared and there was filed here the complete record. As

* *London* v. *O'Dougherty,* 102 F. (2d) 524 (C. C. A. 2) Mar. 13, 1939.

to appeal 6986 we filed a praecipe with the Clerk of the District Court for the same complete record of the proceedings below which we had requested for purposes of appeal in 7060.

So that it would not be necessary for the same record to be printed twice, we moved this Court to consolidate those two appeals,—the one record to stand in both appeals. Having in mind that the rules of this Court had not as yet been revised in respect of the Rules of Civil Procedure then recently adopted, particularly in respect of requirements as to what, if any, portion of the record would be required to be printed, we asked the Court in the same motion to excuse the printing of certain portions of the record, and in respect of the portion which was to be printed we submitted a narrative statement of the evidence calculated to effect further savings in printing expense. So that the rights of none of the parties would be prejudiced, we asked further that all parties have leave in their briefs to refer both to the record returned by the Clerk of the District Court and also to the printed transcript which was to be so prepared, the main record as well as that printed transcript to stand as the record in the two appeals Nos. 6986 and 7060. It was of course considered that those motions in respect of the record and the printing thereof could not be entertained unless the two appeals Nos. 6986 and 7060 were first consolidated.

The Court Trustee objected in writing to the allowance of any or either of those motions, and in addition, asked that an indeterminate time be granted him within which to examine and file suggestions in respect of the narrative statement which we had so submitted to the Court, a copy of which had been given to the Court Trustee with the notice of our motion. With his objections the Court Trustee filed two affirmative motions, one to dismiss our appeal No. 6986 because he said that the Dickinson case was not good law and that the Court was without jurisdiction to grant leave to appeal; the other to dismiss City National Bank and Trust Company of Chicago, as Trustee, and the Committee as parties appellant in appeal No. 7060.

His motion to dismiss appeal No. 6986 was denied *absolutely.* His motion to dismiss the aforesaid parties to appeal No. 7060 was denied "without prejudice to the right to renew same *at the hearing on the merits.*" Those denials were by order of this Court entered October 4, 1939,

which also allowed our motion to consolidate our appeals Nos. 6986 and 7060 and our motions in respect of the record and portions thereof to be printed, including the narrative statement aforesaid.

Thereupon, the Clerk of this Court, pursuant to the rules, called upon us to deposit the estimated cost of printing the record, and such deposit was duly made and the record has been printed and filed.

In the meantime, the Court Trustee, also feeling aggrieved by the same order of May 2, 1939, from which we appealed, perfected as of right a separate appeal therefrom, which is docketed here as No. 7061. The Court Trustee, *originally* having in mind that there was to be but one record in relation to his appeal and ours, filed with the Clerk of the District Court what he termed "A Praecipe for Additional Record." (See Rec. 510) In and by his praecipe for additional record he requested the Clerk of the District Court to prepare a transcript of record for purposes of his appeal, and to include therein all items which we had designated for our appeals (7060 and 6986), as well as certain additional items mentioned in his praecipe.

Accordingly, the Clerk of the District Court incorporated in one and the same record all items designated not only in our praecipe but in the praecope for additional record filed by the Court Trustee, which record was, as above stated, filed with the Clerk of this Court.

Upon the filing of the record it would be the duty of the Clerk of this Court, in the absence of any order to the contrary, to print up separately in each appeal such part of the record as had been called for by the praecipes or designations in each case—which was in each instance substantially the *entire* record, inclusive of the evidence.

In our two appeals, 7060 and 6986, the necessity for double printing of the record was dispensed with by order of this Court, on our motion.

In Court Trustee's appeal, No. 7061, the Court Trustee failed to make any motion to dispense with the necessity of again printing the entire record for his appeal.

However, the Clerk of this Court, feeling that there would be unnecessary duplication if he printed an entire separate record for appeal 7061, as designated by the Court Trustee's praecipe, conferred with both counsel separately and was informed by our office that we saw no reason for duplication in printing unless Mr. Woods did,

and that we would later ask the Court to consolidate the causes so that our printed record, together with the additional items called for in the Court Trustee's additional praecipe aforesaid, and separately printed (as hereinafter stated) might stand as the printed record in all three appeals.

There has been printed and filed in appeal 7061 only the findings and decree of the lower court and a few miscellaneous items which the Court Trustee had requested in addition to the record which we had designated and not the entire record called for by the Court Trustee's praecipe in connection with his appeal.

When the Court Trust failed to move to consolidate his appeal with ours, we filed our motion for consolidation, so that the record called for by the Court Trustee's praecipe in his own appeal (7061) would be before the Court in that appeal. Otherwise the only record which would be before the Court for consideration on the Court Trustee's appeal would be the wholly inadequate short printed record now there on file which was printed by the Clerk under the circumstances above mentioned.

Our other purpose in presenting our pending motion was to have the Court direct and limit the number of briefs to be filed in respect of appeals 6986, 7060, and 7061 and to fix the order of their filing with particular reference as to who should open and close.

Such was the state of the record in this court when the Court Trustee filed his response and objections to our motion to consolidate his appeal 7061 with our appeals and to fix the number of briefs and the order of filing. He also renewed his motions to dismiss our appeal 6986 and also appeal 7060 as to certain parties. The several motions in this paragraph mentioned are now pending for determination.

We shall first discuss the Trustee's objections to our motion.

Why is it that after designating the complete record in his own appeal (on which designation we were entitled to and did rely), the Court Trustee is now anxious to prevent consolidation so that the complete record so designated by him shall not in fact be before the Court in his appeal 7061? The reason is obvious. As the Clerk, after conference with us and Mr. Woods, printed only the findings of fact and conclusions of law in which the Court found that City National Bank and Trust Company was

liable for approximately $100,000, Mr. Woods wants to be in a position to say that the printed record now on file in 7061 is the entire record in that case, and that, since it does not include the evidence on which those findings are based, the findings so made must stand, and accordingly that the Court erred in failing to enter a decree against the City National for that amount.

That this is the present intention of the Court Trustee is best evidenced by paragraph 8 of his response to our motion, where he says:

> "City National Bank and Trust Company, having failed to designate in the District Court, the evidence with reference to appeal 7061, as required by Rule 75 of the Federal Rules of Civil Procedure, now seeks to have this court change the record in appeal 7061, and allow them in this court to specify what the record shall be in 7061, (by addition of the evidence) long after the appeal record is sent here, and long after the record is printed and on file in this Court."

—meaning the meager portion printed by the Clerk under the circumstances above outlined.

75(a) of the Rules of Civil Procedure provides that the party taking the appeal shall file a designation of the portions of the record to be contained on appeal and that within ten days thereafter any other party to the appeal may serve and file a designation of additional portions of the record which he desires to have included. This rule was in full force and effect when both appeals 7060 and 7061 were taken. When the Court Trustee, for purposes of his appeal 7061, filed his designation of record pursuant to requirements of Rule 75(a) and designated the entire record, inclusive of the evidence, which we had called for on our praecipe in 7060, there was no occasion for us to file an additional praecipe for record in his appeal, and the Trustee's claim that there was such occasion is a direct misrepresentation to the Court of what was contained in his own praecipe, as mere inspection of the record will disclose.

If the Court Trustee contends that his praecipe for record filed in relation to appeal 7061 did not include by reference the same items as we specified in our praecipe in relation to appeal 7060 and that his praecipe is confined only to the nine additional items therein expressly specified, how does it happen that the findings of fact and conclusions of law filed May 2, 1939 and the decree appealed

from entered on the same day appear in his printed transcript but not amongst the nine items so specified in his praecipe?

The remaining point made by the Court Trustee in opposition to our motion is contained in paragraph 7 of his response and is that the appeals are not alike and that they therefore should not be consolidated.

The fact is that both the Court Trustee and ourselves are attacking the same decree. We predicate our attack on the decree on the ground that the evidence does not support the Court's findings of fact. We therefore directly attack those findings. The Court Trustee claims that the evidence does support the findings of fact but that the decree is unwarranted in view of those findings. The Court cannot determine the questions presented in either appeal without reviewing the underlying evidence. It follows that the appeals in essence involve the same subject matter.

Not only is it necessary to get the record in shape in appeal 7061, but it is also desirable that there be some direction by the Court limiting the number of briefs to be filed by each party so as to avoid unnecessary duplication by reason of the several appeals, and that the Court also indicate who is to file the first brief and the reply brief. The balance of our pending motion is directed to these matters.

We think further argument unnecessary to establish that but one set and not two sets of briefs should be filed by each of the parties in the event that appeal No. 7061 is consolidated with No. 6986 and No. 7060, which latter two are already consolidated. The question remains as to who in that event should open and close as to briefs and on oral argument.

The rules of this Court are silent as to the opening and closing in the matter of cross appeals, but an analogy, which is perhaps controlling, is to be found in Rule 18 of this Court having to do with the opening and closing on oral arguments. In that rule the Court states that whoever was plaintiff below shall have the opening and closing and the same rule should be applied to the briefs since the proceedings in question were initiated by the report and account of City National Bank and Trust Company of Chicago, as Indenture Trustee, and by its affirmative claim, and also by the original petitions of the Committee and counsel for allowance of administrative fees and expenses.

Those parties who are appellants here in the matter of appeals 6986 and 7060 were the plaintiffs below within the meaning of the rule, notwithstanding that the Court Trustee had occasion to file not only objections but a counterclaim.

We now come to the Court Trustee's renewed motion to dismiss appeal 6986. At the outset we are compelled to call the Court's attention to the Trustee's representation under oath. He tells the Court that his original motion for the same purpose was denied with leave to renew it as he now does.

The fact is that the motion was denied absolutely and without any right of renewal at any time. (See order of this Court dated October 4, 1939.)

We assume that there is special significance to be attached to an order which denies a motion to dismiss absolutely, for in some instances the Court's denial is expressly without prejudice to renew the motion at some later time. If that is not true, the number of times that the same motion may be presented is to be limited only by the Court's patience and no inconsiderable time is required on the part of counsel in answering and re-answering the same matter.

Nor does the motion as renewed contain any new matter meriting consideration. It is predicated on the Court Trustee's averment therein contained that the United States Supreme Court has granted a writ of certiorari to review the ruling of this Court in the *Dickinson* case, 104 F. (2d) 771.

Even granting that this Court were willing to reconsider this motion to dismiss, heretofore absolutely denied, we suggest that the mere taking of the Dickinson case on certiorari does not work a reversal of the ruling of this Court, and that until and unless the Supreme Court reverses the order of this Court in the Dickinson case, that case stands as the law of this Circuit.

Moreover, the Court Trustee's motion to dismiss the appeal by leave is frivolous. If the appeal had been perfected merely by the method of appeal by leave, which was done in the Dickinson case, there might be some merit in presenting the dismissal motion. Here, however, the appeal was perfected as of right and by leave. Regardless of which was the proper method for raising all of the questions now before the Court, they are, in any event, here for decision. If the Supreme Court, instead of merely

granting certiorari in the Dickinson case, had already decided that the appeal by leave where fee questions are raised is not the proper method of appeal but that appeal lies only as of right, even then the dismissal of our appeal by leave would have no effect upon the questions now before the Court and would in no wise affect the right or the duty of the Court to determine every issue that has been here presented.

In response to the renewed motion of the Court Trustee to dismiss from appeal 7060 the Indenture Trustee and the Committee, we call the Court's attention to the answer which we filed to the Court Trustee's original motion for that purpose. And we remind the Court that that motion was denied without prejudice to the Court Trustee's right to renew it, *not now but at the hearing on the merits.* His representation under oath to the contrary is a deliberate attempt to deceive the Court.

There is nothing set up in his renewed motion not contained in his original motion except that the petition for certiorari to review the decision of this Court reported in 104 F. (2d) 970 was denied by the United States Supreme Court on November 6, 1939.

That being so, we of course admit that the decision of this Court in that case stands as the law in this Circuit. But the only import of that decision was that the right of City National Bank and Trust Company, as Trustee, and of the Committee to continue to act in a representative capacity on behalf of the bondholders had ceased. This does not mean that the Bank and the Committee may not continue to act on their own behalf in respect of matters which affect their own individual interests, which are the only matters involved in these appeals, namely, the allowance of the individual claim of the Trustee and of the petitions of the Committee and its counsel for administrative fees and expenses and the counterclaim of the Court Trustee which is directed against City National Bank and Trust Company individually in an effort to surcharge its account. In respect of none of these matters can it be said that either the Committee or the Bank is purporting to act on behalf of the bondholders.

In conclusion, we submit that such motions as we have made have been made of necessity and for the purpose of economy and simplicity in presenting the issues raised by the several appeals; while every motion made by the Court Trustee and every answer filed by him to our mo-

tions have been made for the purpose of preventing a hearing and determination of the whole matter on the merits, by resort to technical errors alleged to have been made by us in perfecting the appeals and getting the proper record before the Court.

We submit that we have established that these alleged errors do not exist and that our motion for consolidation and to limit the number of briefs and to fix the time and order of the filing thereof should be allowed and that the Court Trustee's renewed motions for dismissal should be definitely and finally denied.

Respectfully submitted,

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
Attorneys for City National Bank and Trust Company of Chicago, individually and as Successor Trustee under indenture securing Granada Apartments First Mortgage Bonds; Albert J. Peterson, Lewis W. Riddle, William G. Sturm, and E. A. Kilmer, members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933 with respect to said Bonds; and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien, and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman,
Appellants.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
Attorneys for Appellants.
105 South La Salle Street,
Chicago, Illinois.

Endorsed: Filed November 16, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the twenty-seventh day of November, 1939, the following further proceedings were had and entered of record, to-wit:

Monday, November 27, 1939.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank & Trust Company of Chicago, etc., *et al.*,
Appellants,

6986
7060 *vs.*

Weightstill Woods, etc., *et al.*,
Appellees.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the Court the renewed countermotion of appellee Weightstill Woods, as Court Trustee, to dismiss appeal No. 6986, be, and it is hereby, denied.

It is further ordered that the renewed motion of appellee Weightstill Woods, as Court Trustee, to dismiss appeal No. 7060 as to certain appellants be, and it is hereby, denied.

It is further ordered that these consolidated appeals be heard on the same day as causes Nos. 7061 and 7086, that separate briefs be filed in each of the three causes, and that not more than three hours be allowed for the hearing of the three causes, such time to be divided among counsel as they may themselves determine.

And afterwards, to-wit: On the twenty-third day of February, 1940, the following further proceedings were had and entered of record, to-wit:

Friday, February 23, 1940.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Walter E. Treanor, Circuit Judge.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank and Trust Company of Chicago, etc., *et al.*,
Appellants,

6986
7060 *vs.*

Weightstill Woods, etc., *et al.*,
Appellees.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. Vincent O'Brien, counsel for appellants, and by Mr. Weightstill Woods, counsel for appellees, and the Court having heard the same takes this matter under advisement.

And afterwards, to-wit: On the twenty-sixth day of March, 1940, there was filed in the office of the Clerk of this Court, the opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

October Term, 1939, January Session, 1940.

In the Matter of
GRANADA APARTMENTS, INC.,
a Corporation,
Debtor.

Nos. 6986 and 7060.
CITY NATIONAL BANK & TRUST COMPANY OF CHICAGO, Etc., *et al.*,
Appellants,
vs.
WEIGHTSTILL WOODS, Court Trustee, *et al.*,
Appellees.

No. 7061.
WEIGHTSTILL WOODS, Court Trustee,
Appellant,
vs.
CITY NATIONAL BANK AND TRUST CO. OF CHICAGO, *et al.*,
Appellees.

No. 7186.
GRANADA APARTMENTS HOTEL CORPORATION, a Corporation, and WEIGHTSTILL WOODS, Court Trustee,
Appellants,
vs.
INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, *et al.*,
Appellees.

No. 7086.
WEIGHTSTILL WOODS, Court Trustee,
Appellant,
vs.
ARLINGTON, INC., a Corporation,
Appellee.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

March 26, 1940.

Before SPARKS, MAJOR and TREANOR, *Circuit Judges.*

MAJOR, *Circuit Judge.* These appeals are from orders

in a corporate reorganization proceeding (77B) and are so closely related that they may appropriately be considered and disposed of in one opinion.

Granada Hotel Corporation (predecessor in title of the debtor) was organized in 1924, and its bonds marketed by Chicago Trust Company as the house of issue. On September 1, 1928, the indebtedness was refinanced and a trust deed in the nature of a mortgage made to Chicago Trust Company, as trustee, to secure payment of first mortgage bonds of $525,000, $300,000 of which were underwritten by Cody Trust Company, and $200,000 by Chicago Trust Company. Another trust deed was made to Chicago Trust Company to secure a second bond issue in the amount of $360,000. The premises described in the trust deed consisted of a furnished apartment hotel, operated as such. Since 1928 there have been numerous successor trustees and much litigation. The hearing in the court below, which culminated in the orders complained of, covered all this period and apparently included a review of the acts and doings of all persons, corporations and attorneys, as well as the various matters of litigation had concerning the property.

The record is of such volume that we find it difficult to make even a summary of the situation in an opinion of reasonable length. It is almost as difficult to obtain a clear picture of the involved issues. Appeals 6986 and 7060 are the same, the former allowed by the District Court and the latter by this court. The appellants in these appeals, in addition to City National Bank and Trust Company of Chicago, (herein referred to as "City National") are a bondholders' protective committee (herein referred to as the "committee") consisting of Peterson, Riddle, Sturm and Kilmer, and the legal firm of Defrees, Buckingham, Jones and Hoffman.

Subsequent to the approval of a plan of reorganization, submitted by the committee, City National, on September 14, 1937, filed its proof of claim in the amount of $10,849.90, alleging said indebtedness was established by decree of the Superior Court of Cook County, Illinois, entered December 18, 1936, in a certain foreclosure proceeding, in which City National was complainant and the debtor corporation, defendant. The itemized statement of the claim as fixed and allowed by the Superior Court, was as follows: Fees of City National as Trustee, $2570;

solicitor's fees for City National, $8250; and court reporter's fees, $39.90. At the time the debtor's property was turned over to the court trustee, the City National had in its possession the sum of $1608.56, which it applied to its claim, thereby reducing the same to the sum of $9241.34 as shown by the amended claim. August 30, 1937, City National filed a report of its stewardship as trustee, and on September 9, 1937, the court trustee filed objections to the report and claim as filed by City National. Thus are raised the more important issues of the case. The objections are in the nature of a counter-claim, charging divers acts of mismanagement and asserting that City National was entitled to no compensation either for itself or its attorneys. Answer was filed to this counter-claim, denying specifically its numerous allegations.

The committee and the attorneys, on September 14, 1937, filed their claims for reasonable compensation and fees, to which the court trustee objected. In the decree appealed from, entered May 22, 1939, the court disallowed in toto all claims made by City National, the committee and the attorneys. The action of the court in this respect is here involved. As stated, the investigation, inquiry, or whatever it may be called, upon the issues thus made, assumed a wide range, including everything which transpired in connection with the debtor property from the time of the first bond issue down to the hearing. Although we are convinced that much of what was heard and considered was irrelevant and immaterial to the issues before the court, it seems important to relate some of the more salient matters.

On July 25, 1931, Chicago Trust Company, the original indenture trustee, consolidated with Central Trust Company of Illinois to form Central Republic Bank and Trust Company, which later changed its name to Central Republic Trust Company, and, by the terms of the trust deed thereupon became trustee. August 7, 1933, the first mortgage being in default, Central Republic Trust Company filed a cross-complaint to foreclose a junior mortgage in the Superior Court of Cook County, Illinois, in which William A. Thuma was plaintiff and Granada Apartments, Inc., and all others having any interest in the mortgage property, were defendants. In those proceedings, Chicago Title and Trust Company was ap-

pointed and acted as receiver. In the meantime, and on November 20, 1934, a receiver was appointed for Central Republic Trust Company by the Auditor of Public Accounts of the State of Illinois. The Chicago Title and Trust Company, named as successor trustee to the Central Republic Trust Company, refused to accept and, thereupon, on January 3, 1935, City National was appointed successor trustee under said trust deed by the Superior Court of Cook County in said foreclosure proceedings, and duly accepted such appointment.

Whereupon, the City National was substituted in the place of Central Republic Trust Company as cross-complainant in the mortgage foreclosure. On February 11, 1935, the receiver of the Central Republic Trust Company filed his financial report, whereupon it was ordered to pay the cash on hand, in the sum of $9995.46 to City National, and such receiver and Central Republic Trust Company were discharged from any and all liability under and in connection with said trust deed. The mortgage foreclosure in the state court pursued the usual course, and after a report by the Master, the court, on December 18, 1936, entered a decree of sale in which was found the amount due upon the indebtedness secured by the trust deed, including the fees for City National as alleged in its claim now before us.

City National continued in possession of debtor's property until the 17th day of May, 1937, when it surrendered possession to the court trustee (appellee). Subsequently, as stated heretofore, City National filed a report showing receipts and disbursements from the time of its appointment as trustee in the Superior Court of Cook County to the time it surrendered possession.

The court entered an extensive resumé of the history of the debtor property, covering 24 pages of the record, under what is designated as "Findings of Fact and Conclusions of Law," in which appellants and others are charged with having knowingly participated in a conspiracy to defraud the bondholders. The findings are of such serious character that we have read and reread them, and searched the record with a view of endeavoring to ascertain if they find support. Although the result of this litigation must necessarily depend upon such determination, we have received only meager assistance from the court trustee. Instead of giving us references

to the record which support the findings, the trustee is content to consume 28 pages of his brief with a verbatim copy of such findings. He then assumes that they are supported, and predicates his argument upon such assumption. A good portion of his argument is devoted to the Statute of Gloucester, with supporting authorities, in an effort to demonstrate that the court trustee is entitled to recover from City National in triple amount for all damages and waste for which the latter was found liable. It is argued that the District Court having found the City National liable for damages in the sum of $79,930.93, that, therefore, it is liable for three times that sum, viz.: $239,792.79. The remoteness of this argument is apparent. It is an attempt to cross the bridge long before it is reached. The first thing we must determine is whether the findings find any substantial support in the record, and so we revert to that phase of the situation. It seems necessary to copy Finding 55, which we set forth in a footnote.[1]

We shall discuss briefly each of these items, which will

1. 55. The evidence shows that the following items are due from City National Bank and Trust Company to Debtor Estate and the Court Trustee, together with interest at five per centum on each item from the date of its accrual and that the accounting by City National should be surcharged therewith:

I. All costs of this proceeding including trial counsel fees for Court Trustee and cost of special Auditing and Engineering services, expense for exhibits and witness fees, and extra services of the Court Trustee caused to the Debtor Estate, in such sums as the Court may determine upon hearing as to same.

II. Restoration of incinerator (waste and neglect) August 1937 ..... $ 500.00

III. City National without making a substantial adverse claim, refused to pay over cash funds pursuant to Court order and demand made by the Court Trustee May 1937 ..... $ 1990.86

IV. Without authority City National consented to and made wrongful payment from rentals upon receiver's certificate ..... $ 7500.00
And also cause payments to Pick successor August 1933 ..... $13000.00

V. City National charged for management fees as trustee in possession; never earned, before May 1937 ..... $11365.42

VI. Without authority City National paid court costs, fees and legal expenses never earned, February 1936 ..... $10186.65

VII. City National paid valet commissions to Arlington, earned by Granada rental space, before April 1937 ..... $ 250.00

VIII. City National without authority willfully reduced and failed to collect or pay over rentals due from Arlington for interhotel services from January 1, 1933 ..... $19170.00

IX. City National neglected and failed to seek tenants for ballroom, solarium, writing room and director's room, all space adjacent to lobby $10968.00

X. Needless tax penalties (admitted by City National petition) resulting from failure to apply funds to taxes, before May 1937 ... $ 5000.00

require some statement of facts not related heretofore. In connection therewith, we think it important to keep in mind that City National served only as trustee from January 3, 1935, to May 17, 1937, and so far as we are able to ascertain, prior to the time of this appointment and its participation in the state foreclosure proceeding, had no control over and, we think, no connection with debtor's property. It is true that the committee, organized in 1933, one of whose members was an officer of the City National, had their office and performed their functions in quarters provided by the City National, and employed the services of a division of the City National, whose business was to furnish service to committees representing bondholders. While there may be valid criticism of the relation thus shown, we do not see how that, in itself, could affect the legal duties or obligations of City National, and certainly not prior to the time the latter assumed the duties and responsibilities as trustee.

We shall now consider each of the items in the finding set forth in footnote 1. It is apparent that Item I is dependent upon the result of these appeals.

Item II charged to City National, has to do with an incinerator installed in debtor's property by the court trustee. We find no evidence that the necessity for this installation was the result of negligence or mismanagement on the part of City National.

Item III, in the amount of $1990.86, includes a number of items, the largest of which is $1608.56. In the proceeding in the Superior Court of Cook County, referred to heretofore, an accounting was had between City National and the debtor. By the decree entered in that court December 18, 1936, the account was adjudicated, and the City National was expressly authorized to apply said sum upon the indebtedness due it. It appears to be the position of the court trustee that the order of the Superior Court was void. We conclude to the contrary and, that City National properly applied this amount to its claim as authorized by that court. The balance of Item III amounts to $382.30, and is composed of a number of small items set aside by City National for the payment of taxes and other obligations for which it contends its liability had become fixed. We do not think it necessary to go into each one of these small items. If the items making up this sum of $382.30 have not now been disbursed, then

it is our conclusion that such item should be paid over to the court trustee, but if they have been disbursed by City National, then there is no liability to the court trustee.

Item IV. The amounts of $13,000 and $7,500 charged to City National in this item were paid in conformity with the decree of the Superior Court. In fact, the former was disbursed in August, 1933 by Chicago Title and Trust Company, the then receiver. At this point, it seems pertinent to make brief reference to a matter which concerns this disbursement, and which the court trustee describes as the "heart of the present controversy." When the first bonds were issued in 1924, and again when reissued in 1928, it is contended, but disputed that those responsible for their issuance, in a prospectus issued by them, represented to the purchasers of such bonds that the furniture and fixtures of the debtor property were included in the mortgage as security. Assuming such misrepresentation was made, we think it is wholly immaterial to the issue here involved. How or in what manner the City National could be chargeable with a fraud committed at that early date, with which they had no connection or concern, we are not able to ascertain. The fact remains that the owner of the debtor property purchased the furniture and fixtures from Albert Pick and Company upon the security of a chattel mortgage. The validity of this chattel mortgage was in dispute and its foreclosure resisted. The litigation with reference thereto was terminated by a decision of the Appellate Court of Illinois upholding its validity. *Thuma* v. *Granada Hotel Corp.*, 269 Ill. App. 484. In the meantime, Pick had assigned his mortgage to the International and Industrial Securities Company. The mortgage was foreclosed and a deficiency decree entered in the sum of $22,500. The facts were presented to the Chancellor of the Superior Court, all the parties in interest being present, and the court concluded that rather than permit a removal of the furniture and fixtures and thus interfere with the tenants and the income from the property, that the deficiency decree should be satisfied. The court therefore directed that $11,000 should be paid from funds in the hands of the receiver and, in addition, $2000 as attorney fees to the indenture trustee on account of services in connection with the chattel mortgage litigation. In addition, the receiver was directed and did issue its certificates in the amount

of $11,500, which were purchased by the Indemnity Insurance Company of North America. These were reduced through payments by the receiver, Chicago Title and Trust Company, to $7,011.01, and when Central Republic Trust Company took possession of the property on March 22, 1934, it was ordered by the State Court to assume and pay that balance. It must be kept in mind, so far as City National is concerned, that the decree of the State Court authorizing such expenditure and the issuance of the receiver's certificates, was entered August 11, 1933, more than a year prior to its appointment as trustee. When it took possession January 3, 1935, it took the property subject to the lien of these certificates. September 22, 1936, it paid upon the same, $2500, and on February 23, 1937, $511.01, leaving a balance of $4000 due on such certificates. The plan of reorganization provided for the payment of this $4000 to the Indemnity Insurance Company. While it is charged to the City National in this Item IV, it also represents the same item as is involved in Appeal 7186, referred to hereinafter. In order to sustain the charges in Item IV, it is necessary, of course, to hold that the proceeding in the State Court authorizing such expenditures and the issuance of receiver's certificates, was void. We have, however, *In re Granada Apartments,* 104 F. (2d) 528, upheld the validity of the State Court proceedings. There, as here, it was charged that the receiver's certificates were issued in fraud of creditors.

Item V. This item in the amount of $11,365.42, represents 4% of debtor's gross income charged for management. Of this amount $2512.23 was received by the Central Republic Trust Company during its tenure as trustee, and approved by the State Court. Of the amount charged by City National, the sum of $6189.60 was also approved by the State Court. The trust deed authorized the retention of reasonable management fees of the trustee and its agents. The State Court found the amounts retained to be reasonable and approved the same by decree. The court trustee, in the instant matter, was allowed $7500 as compensation for his services in operating the same property for a period of about six months, which is about the same rate as that received by City National. It appears from the record that the charge was the usual and customary one under the circumstances.

There is no basis for now charging this item to City National.

Item VI in the amount of $10,186.65 represents the total of a number of small items and here again no distinction is made between City National and former trustees, and the State Court proceedings are treated as invalid. Of this item, $2552.80 was paid by the City National to the State Court Master-in-Chancery, and $2000 to counsel for the Chicago Title and Trust Company as receiver for fees determined and ordered paid by an order of the State Court of March 16, 1934. This latter item of $2000 appears also to have been charged to City National in Item IV discussed heretofore. In 1935, an involuntary 77B petition was filed against the debtor by three creditors. Counsel for City National attacked the validity of that proceeding, and its contention was upheld by the Supreme Court. *Tuttle* v. *Harris,* 297 U. S. 225. Included in Item VI is the sum of $4025.29 of which $3500 was paid as attorney fees and the remainder as court costs incurred in that litigation which the court trustee here argues was without benefit to the estate. This, we need not determine—it is sufficient, so far as we are able to ascertain, that it was carried on in good faith and the charge therefore was reasonable. Also included in Item VI is the sum of $1608.56 which appears to represent the same charge included in item III discussed heretofore. In other words, this amount is twice charged against City National.

Item VII. The sum of $250 represents commissions paid to Arlington Hotel because of business supplied to the valet shop in the basement of the debtor's property. It was customary for a hotel to receive a commission on business furnished an outside valet shop. It is argued by City National that it was of benefit to debtor's property to maintain a valet shop on the premises in order that its tenants might be accommodated; that it did not have sufficient business of its own to maintain such a shop and, therefore, as an inducement to Arlington, it paid the customary commission for the business furnished. We perceive neither fraud nor mismanagement in such an arrangement.

Item VIII. It seems that adjacent to Granada Apartments and about the same time, there were constructed two other apartment buildings, Lincoln Park Manor and

Arlington Hotel. Granada provided the facilities for furnishing heat, hot water and refrigeration to the other buildings.

Prior to December, 1933, Granada received as compensation for such services $11,280 per annum. At that time a contract was entered into between the owners of the two properties by which Granada was to receive as compensation $7200, or a reduction of $4080 per annum. Central Republic Trust Company, as trustee, continued the same charge, as did City National after it took possession. The amount of this item, $19,170, represents the difference between what City National and its predecessor received, and what they would have received had there been no reduction in such charge. The Arlington was in process of reorganization, and it seems to be the position of the court trustee that because a committee representing the bondholders of Arlington was connected with City National in the same manner as the committee in the Granada matter, that there was some character of fiduciary relationship existing by which City National should have obtained the compensation originally established for this service. Though this situation may arouse some suspicion, we do not see how it can amount to fraud. Especially is this true in view of the rather conclusive testimony of at least two engineers that the compensation received from Arlington was fair and reasonable. In fact, it was shown that Arlington proposed to equip its own building with facilities to provide such service in the event that Granada should insist on a charge greater than what was made.

Item IX. Granada, at the time of its construction, provided on the ground floor, space for a solarium, writing room, ball room and offices for the use, not only of its own tenants, but for those of adjacent buildings in which the original owner of Granada was interested. This situation had existed since the construction of the building in 1924. It is the contention of the court trustee that City National should have converted this space so that it could have been used for commercial purposes and, that by its failure to do so, it is to be charged with mismanagement. The amount of the item, $10,968, is supposed to represent what the rental value of this space would have been had it been made fit for leasing purposes. A number of witnesses testified pro and con concerning the

feasibility of making the necessary alterations and also the probability of a demand for such space if it had been available. We are convinced, from a study of the testimony, that the advisability of making the changes required, was a matter of speculation. Even if City National had deemed it expedient to make the necessary alterations, there still was a question of its power to incur the rather large expense which would have been necessary. If it had done so and had not been able to find tenants for the space, we doubt not but that the court trustee would now be attempting to charge it with a reckless expenditure in this respect. We do not understand that a trustee is liable for errors of judgment, provided it acts in good faith. Its acts must be judged in the light of its foresight rather than its hindsight. *Chicago Title and Trust Company* v. *Chief Wash Company*, 368 Ill. 146, 159.

Item X. City National states there is no evidence in support of this charge of $5000, and we are unable to find any. In the brief for City National, the court trustee is called upon to point out upon what the item is predicated, but no response is made. It was not mentioned in the counter-claim of the trustee.

Thus, we conclude there is no justification for charging City National with these various items, with the exception of what we have said with reference to Item III. In reaching this conclusion, we are not unmindful of the rule which requires us to accept findings of the trial court supported by substantial evidence. Here, however, they are predicated upon a theory of the existence of a conspiracy to which appellants were parties. We are satisfied no such conspiracy was proven. More than that, we are convinced that so far as this record discloses, the attorneys have received no more than reasonable compensation for services rendered in numerous matters of litigation had in the state courts. Also, we are not unmindful of the broad powers of a bankruptcy court in adjudicating the equitable rights of the parties involved. Numerous cases are called to our attention in support thereof, including the recent case of *Pepper* v. *Litton*, 308 U. S. 295. We are not aware, however, that any court has gone so far as to hold that even a court of bankruptcy is vested with power to disturb the rights of parties long since determined by courts of competent jurisdiction merely upon a suspicion of fraud. So far as this record discloses, the

decrees, orders and judgments of the state court were in proceedings where the court had jurisdiction of the subject matter and the parties and we do not think they can be swept aside upon any such pretext as is here advanced.

Having concluded that the counter-claim of the court trustee can not be sustained, and that the findings of the court in support thereof were erroneous, we are now confronted with the perplexing problem as to what disposition should be made of the claims of City National, the committee and the attorneys. It is argued by appellants that this court has the right and should determine the fees to be allowed to these various parties on the theory that the District Court made allowances wholly inadequate. Our attention is called to *In re Dickinson Co.*, 104 F. (2d) 771, wherein this court increased a fee allowed by the District Court. We doubt, however, if that case is authority for such action here for the reason that we are uncertain as to whether the action of the court below constituted a fixing or determination of the amounts to be allowed on the respective claims.

Finding 55 (footnote 1) discussed heretofore, definitely fixes in favor of the court trustee a liability on City National in the sum of $79,930.93, which, with interest, exceeds $100,000, although later in the findings, as well as in the decree, it was relieved of all liability except as an offset to what might be due it. In Finding 56, it is stated that City National was not a lawful trustee, but if entitled to anything, should not receive in excess of $500, and nothing for out-of-pocket expenses. It was found that if the committee were entitled to receive anything the maximum would not exceed $1000 for their fees, $1150 as a maximum allowance for depositary fees and a maximum of $2285.21 for out-of-pocket expenses; that the attorneys for City National and the committee "if they were entitled to receive any compensation for services in this proceeding or for any previous services about Granada matters, the maximum therefor would not exceed $4500 in addition to cash payments made to them." Then it is stated: "Any award that should be made by reason of their services, could be credited only to account of City National."

In Finding 57, the court finds that all equities are with the court trustee and then continues: "* * * but the court believes that justice to all concerned will be rendered more speedily if the opposing claims and contentions are

set off against each other and said named parties to this accounting (court trustee, City National, committee, and attorneys) are left as they are now, each to pay its own costs and charges, and no cash recovery to be allowed or made by these findings and decree." It is apparent that no definite determination was made as to the amounts which appellants were entitled to recover. It is true the maximum amounts mentioned by the court were about $9000, but it is difficult to understand how the court arrived at the conclusion that this amount should or could constitute a set-off against more than $100,000, specifically found due and owing by City National.

The decree entered May 2, 1939, expressly disallows Claim No. 9 by City National against the debtor,[2] and also all claims for expenses and allowances by if, the committee and their attorneys. City National was discharged from making any further accounting and it was provided that all amounts due it from the debtor's estate be off-set against the counter-claim of the court trustee.

While we, perhaps, have the authority on review to increase, as well as decrease fees fixed by the court below, we do not think the situation here is such that we should determine the amounts in which the various claims shall be allowed. It seems appropriate, however, to give some general expression of opinion. We have examined the claims submitted by City National and the committee for what is designated as out-of-pocket expenses, and we see no reason why those claims should not be allowed in full. As to all other claims for compensation and fees, for services rendered in connection with the reorganization proceeding, the amounts mentioned by the court are inadequate, and the court should determine and fix what is the reasonable and customary charge for services thus rendered.

At the commencement of the hearing, counsel for City National stated:

> "* * * we are willing that the Court here fix the reasonableness of the charge for services rendered by us in the state court proceedings on behalf of the Indenture Trustee, notwithstanding the existing limitations upon the Federal Court's right to review the al-

2. This is the claim predicated upon the order of the Superior Court of Cook County, entered December 18, 1936 in the foreclosure proceedings discussed heretofore.

lowance for such services made by the state court in the decree of sale."

In view of this concession, the court has the right to review the reasonableness of the allowances made in the state court upon which Claim No. 9 is predicated. In doing so, the State Court proceeding should be considered as valid and untainted by fraud.

These appeals are reversed with directions that the court proceed in accordance with the views expressed, costs to be taxed to the court trustee.

Appeal 7061 is by the court trustee and presents a situation, the reverse of that which we have considered in Appeals 6986 and 7060. Here, it is contended that the court in its findings, specifically held City National liable to the court trustee in the amount of about $80,000 and then, by its decree, refused to enter judgment against City National in conformity therewith. There would be merit to the position of the court trustee if such findings were supported by substantial evidence. We have determined to the contrary, however, and it necessarily follows that there is no merit in the position of the court trustee in the instant appeal. Therefore, that portion of the decree by which the court refused or failed to give judgment against the City National based upon the findings in question, is affirmed. Costs to be taxed to the court trustee.

Appeal 7186 is from an order of the District Court entered November 20, 1939, directing Granada Apartments Hotel Corporation, the new corporation created as a result of the reorganization proceeding, to pay the claim of the Indemnity Insurance Company of North America in the sum of $4000 and interest forthwith. This claim has been discussed in connection with Item IV in Appeals 6986 and 7060. It is predicated upon receiver's certificates issued by order of the Superior Court of Cook County and purchased by appellee. We are unable to perceive how there could be any doubt but that the court properly directed the payment of this claim in cash by the new corporation. The plan of reorganization approved by the court, provided:

"5. Payment of the said Receiver's Certificate now outstanding issued in said foreclosure proceedings shall be assumed and paid in cash by the Reorganized Company."

The assets of the old corporation were conveyed by the court trustee to the reorganized company upon an assumption by the latter of all claims and liabilities as provided in the plan of reorganization. It seems this alone would be sufficient to settle this controversy, but in addition, this claim was before this court *In re Granada Apartments, Inc.*, 104 F. (2d) 528, and a reading of that opinion discloses clearly that this claim was to be paid in cash by the reorganized corporation. The order of the District Court is therefore affirmed. Costs taxed to the court trustee.

Appeal 7086 is from an order of June 30, 1939, dismissing the petition of the court trustee wherein it was sought to recover against Arlington, Inc. (successor of Arlington Hotel). This claim, or the major portion of it, is predicated upon the same situation discussed under Item VIII in Appeals 6986 and 7060. In those appeals, it was sought to hold City National liable for the difference in the amount it received as compensation for heating and refrigeration facilities furnished by Granada to Arlington, and the amount which the court trustee contended should have been charged. The argument here on behalf of the court trustee is predicated upon the same findings of fact (so far as material) as those upon which it was sought to hold City National liable. We have concluded those findings were without substantial support and for that reason City National should not be required to account in the matter. We also conclude there is no liability on the part of Arlington, Inc. The decree of the District Court is affirmed. Costs to be taxed to the court trustee.

Endorsed: Filed March 26, 1940. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the twenty-sixth day of March, 1940, the following further proceedings were had and entered of record, to-wit:

Tuesday, March 26, 1940.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Walter E. Treanor, Circuit Judge.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank and Trust Company of Chicago, etc., *et al.*,
Appellants,

6986 *vs.*

Weightstill Woods, etc., *et al.*,
Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby, reversed, with costs against Weightstill Woods, Court Trustee, and that this cause be, and the same is hereby, remanded to the said District Court with directions to proceed in accordance with the views expressed in the opinion of this Court.

On the same day, to-wit: On the twenty-sixth day of March, 1940, the following further proceedings were had and entered of record, to-wit:

Tuesday, March 26, 1940.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Walter E. Treanor, Circuit Judge.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank and Trust Company of Chicago, etc., *et al.*,
Appellants,

7060 *vs.*

Weightstill Woods, etc., *et al.*,
Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby, reversed with costs against Weightstill Woods, Court Trustee, and that this cause be, and the same is hereby, remanded to the said District Court with directions to proceed in accordance with the views expressed in the opinion of this Court.

And afterwards, to-wit: On the tenth day of April, 1940, there was filed in the office of the Clerk of this Court, a petition for rehearing in causes Nos. 6986 and 7060 (also cause No. 7061), which said petition for rehearing is in the words and figures following, to-wit:

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IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, 1939, APRIL SESSION, 1940.

In the Matter of GRANADA APARTMENTS, INC., a corporation, Debtor. Appeals 6986 and 7060, 7061.	Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

PETITION FOR REHEARING.

WEIGHTSTILL WOODS,
Court Trustee.

THE DONNELLEY, WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, 1939, APRIL SESSION, 1940.

In the Matter of GRANADA APARTMENTS, INC., a corporation, Debtor.	Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.
Appeals 6986 and 7060, 7061.	

PETITION FOR REHEARING.

1. This is a reorganization case. By the Bankruptcy Law definite duties are placed upon the court. By Act of Congress the court is to see that scattered owners are given adequate protection.

2. In every estate administration the court itself has larger duties than it has in private litigation. Especially under the paramount law of the bankruptcy act, the court has a direct duty to the unorganized beneficiaries of the debtor estate.

3. In *Case* v. *Los Angeles Lumber Company*, 308 U. S. 106, our Supreme Court placed the duty squarely upon

our reorganization courts to go behind stipulations, agreements and orders in prior attempted reorganizations which have failed, and announced that the duty is to deal with the equity reality even though the intervening acts which failed of their purpose were not fraudulent.

4. Under that statement of equitable principle and duty, the Court Trustee submits that Your Honors have assumed a duty to examine the original transcript of record fully for yourselves, when you permit it to be brought here, and you incorporate it into the record issues in this court by your own orders and dispense with printing. It seems to the Court Trustee that you should make an examination and demonstrate by your opinion that there was an absence of conflicting evidence, before you can justify any change in the findings of special fact made by the trial court who heard and saw all the witnesses. We submit that the opinion is not a performance of the duty which the reorganization court is required to execute as announced by the Los Angeles Lumber case.

5. The brief for Court Trustee stated his position thus at page 51:

> "The failure of City National to secure from its predecessors and other despoilers of Granada estate, an accounting and adequate settlement of moneys due, was followed by continued use of Granada funds for private litigation and non-trust purposes. The District Court has so found. Many of the facts are admitted by the statement of Mr. O'Brien and by the pleadings. Whatever conflict may be claimed in the evidence, is not sufficient to raise any power or duty of this Court to revise or review this finding of fact. The rules of court which limit the size of this brief, render impractical an assembly of all the evidence which is in the record, separated for each finding of fact. Every finding is supported by substantial evidence in the record."

The oral argument, which your opinion does not mention, was used by the Court Trustee to enlarge upon the factual situation.

6. The Court Trustee's brief (7060 and 6986 pages 75 to 80) demonstrates that many of the transactions in this Granada matter are identical in character with the transactions involved in the *Peacock Food Markets Case,* 108 Fed. (2d) 453, which was decided in favor of a Court Trustee, recently by Your Honors. The brief also demonstrates that that case is authority for disposing of the present case in a like manner in favor of the Granada Court Trustee. The brief for Court Trustee has utilized many pages of parallel columns in making a careful comparison of the two cases. The opinion of this case fails to distinguish the two cases. It does not mention the *Peacock Food Market Case,* nor mention the discussion of same by the brief of Court Trustee.

7. In the *Peacock Food Market Case* this Court of Appeal held that the suspicious circumstances attending the personal relationship of the parties voided the transactions involved, unless evidence should be given which would tend to prove that the motives of the parties were *honest and honorable.* In the case at bar Your Honors call upon the Court Trustee strictly to prove that each and every act of the parties (though very suspicious) was in fact the result of *dishonest and dishonorable* motives. Your Honors by the present opinion have saddled an entirely different burden of proof upon this Court Trustee, than was allotted to the Court Trustee in the *Peacock Food Markets Case.* This Court Trustee had every reason to rely upon that case in preparing his briefs at bar. Accordingly this Court Trustee respectfully inquires why such a different application of the burden of proof is announced in the case at bar. The question involved is so important that Your Honors might state the reason in the opinion.

That City National, its committee and counsel, were primarily engaged in liquidating the Cody Trust Com-

pany, and that the reorganization of Granada was merely incidental, is evidenced by the following cases decided in the Appellate Courts of Illinois from 1932 until 1938, in which said counsel were of record on behalf of Cody Trust Company:

(1) *In re Petition of Cody Trust Company,* 266 Ill. App. 141 (1932). Counsel for Appellant—Defrees, Buckingham, Jones & Hoffman (Vincent O'Brien and John M. Baker). Opinion filed April 5, 1932.

(2) *In re Appeal of Cody Trust Company,* 269 Ill. App. 638 (1933). Counsel for Appellant—Defrees, Buckingham, Jones & Hoffman (Vincent O'Brien and Thomas R. Mulroy). No appearance for appellees. Affirmed March 6, 1933.

(3) *Cody Trust Company* v. *Dittmar,* 272 Ill. App. 167 (1933). Counsel for Appellant—Defrees, Buckingham, Jones & Hoffman (Vincent O'Brien and Alfred E. Williston). Opinion filed October 25, 1933.

(4) *Cody Trust Company* v. *Hotel Clayton Co.,* 293 Ill. App. 1 (1937). Defrees, Buckingham, Jones & Hoffman (Vincent O'Brien). Opinion filed September 9, 1937.

(5) *People* v. *Cody Trust Company,* 294 Ill. App. 342 (1938). Defrees, Buckingham, Jones & Hoffman (Vincent O'Brien and John Merrill Baker). Opinion filed March 16, 1938.

8. The Court Trustee submits that the elementary law of trusts requires City National and Associates, as accounting trustees to prove not only the rightness, and propriety of every item of their accounts, but also to prove the good faith of their conduct in incurring said items and in paying out moneys. (Brief pages 43-50.) Also the rule is that all the presumptions require this court to sustain the decree and the findings by the trial court, until and unless the contrary is shown convincingly by the record in the Court of Review. Also section 70d5 of the bankruptcy act confirms the duty of a claimant against the estate as follows:

"A person asserting the validity of a transfer under this subdivision shall have the burden of proof."

9. City National and Committee and their counsel by their answer filed here November 16, 1939, to persuade Your Honors to grant them the opening and closing argument, asserted that they have the affirmative in this litigation.

10. It seems to the Court Trustee that the opinion filed March 26, 1940, reverses all these basic principles, and starts from a new and false major premise. The opinion seems to assert that the burden of affirmative case is upon the Court Trustee. You assume that he is plaintiff. Also you apply the rule which is proper only between private litigants who have dealt at arms length.

11. The Opinion overlooks the undisputed fact that City National Exhibit "U" at Page 626, Volume II, of printed record, purports to be only a release and acquittance of balance of payments for services for the one year 1933. That document is dated January 5, 1934. There is nothing in that document, nor elsewhere in the record any reason shown, for any reduction of charge for services to Arlington for the year 1934 or subsequent years. The one and only purpose of that document was to charge off a bookkeeping entry made in 1933.

12. The Opinion also overlooks the undisputed fact that the decree by the Superior Court of Cook County, dated December 18, 1936, expressly refuses to accept or confirm any accounting by City National with anyone. The Judge who signed that decree expressly wrote into the decree with pen and ink in his own handwriting the following language, which appears in Volume One, Page 128 of the printed record, and at 1279, Volume III of the original transcript of record:

> "The Court by the entry of this decree does not approve the accounts of the trustee in possession (City National) of the premises involved herein."

Pages 511 to 515 of Volume 2 of the printed transcript

only partly abstracts that decree. We submit that the opinion by this court reads said decree to mean directly contrary to the deliberate purpose of the Judge who signed that decree of the Superior Court.

The opinion errs in stating that the sum of $1,608.56 was applied on the claim of City National. The decree in the Superior Court merely found that City National claimed it held that sum as trustee. The court struck out the supposed accounting, and wrote in with pen that City National as trustee "represents" it held only that much money. (See original transcript at page 1260.) The record in the bankruptcy court is that City National made no such claim until the trial, and the evidence from the City National records which it produced show this sum has never been applied, but is still held. (See page 851, Volume III of original transcript.) This is part of the money which should have been turned over to the court trustee, upon his written demand at the time of his appointment in May, 1937.

13. The Opinion by Your Honors does not mention the written list of securities, which City National received January 5, 1935 and undertook to be responsible for as successor trustee. City National nowhere in its accounting with the court, and counsel for City National nowhere in its briefs to this court, has attempted to justify or to show any liquidation of the Cody Trust unperformed item on that list. Although the Court Trustee as authorized by court order, upon his appointment made specific demand upon City National, its counsel and its officers to turn over any and all papers and securities pertaining to Granada estate; yet neither City National nor its officers nor its counsel ever mentioned the existence of said list of securities until the very end of the trial in late October 1937, when it was put into record in a mass of other correspondence, which appears at Volume 3 of original trans-

cript, Pages 1321-22. This list of securities shows plainly that the Central Trust Company, the Central Republic Trust Company and City National, all treated themselves and considered themselves not merely an indenture trustee, but as general trustee for Granada for personal property and all other purposes. There is not in the record anywhere any showing that City National ever took any act at all to require anyone to perform the duty shown by said list of securities and by Court Trustee's Exhibit "R", which is at Page 338 of Volume 2 of the printed transcript of record.

14. On the contrary, City National by accepting said list of securities including said Exhibit "R", definitely absolved Central Republic Trust Company and definitely undertook that Cody Trust Company would and should perform the obligation therein expressed to remove all liens prior to the new financing undertaken in 1928. In presenting the Granada plan to the court and to the bondholders, these facts and situations were concealed. No one contends anywhere in this record that Cody Trust or City National has performed any such duty. On the contrary, City National has consistently paid over Granada money for the liens which the Cody Trust Company is bound to remove by terms of the prospectus and by said Exhibit "R". By reason of the deceitful plan, and the direction given by this court, the new corporation has been compelled to purchase those liens at this time.

15. City National still retains the original of said list of securities, and the original of said Exhibit "R" in its personal possession. As trustee it took no action whatever to liquidate the same for benefit of Granada estate. It failed to inform the bondholders. Its counsel failed to inform the bondholders. The existence and nature of the document was concealed until three months after the Granada plan was confirmed by the bankruptcy court on July

14, 1937. This is not only a civil liability, *People* v. *Central Republic Trust Co.*, 300 Ill. App. 297, at 308; but is a failure of duty to make disclosure required by section 29 of the Bankruptcy Law as your Honors have ruled; *U. S.* v. *Shapiro*, 101 Fed. (2d) 375.

16. The Opinion states that the court received meager aid from the Court Trustee to determine whether the findings of the trial court were supported by the evidence. The opinion suggests that the Court Trustee did not cite appropriate record references in his brief which would support the findings of the court below. The Court Trustee went as far as permitted by rules of this court as to size of brief to be filed. The Court Trustee at the time the brief was prepared and now believes that further reference should only be supplementary to other presentation, because opposing counsel at no place in their briefs contended that for any absence of conflicting or substantial evidence in the court below. Opposing counsel by their assignments attacked only a part of the findings, and supported these attacks only by the statement in their briefs that the Judge was partisan. The opinion by this court mentions nothing stronger than some conflicting testimony.

17. Opposing counsel admitted that there was "substantial" evidence to support the findings of the trial court when they said (Page 28 of original brief 6986 and 7060):

> *"for in those instances in which there was conflicting evidence, the findings, if against the weight of the evidence, should not stand if it also appears that the court was prejudiced and prejudged the case."*

18. Since Your Honors did not accept the contention of opposing counsel that the court below was prejudiced, and since opposing counsel placed their case on that false ground; it would seem that the opinion of this court

was in error in reversing any findings of fact made by the trial court. In their briefs in 6986 and 7060, opposing counsel never contended that there was no evidence to support the findings of the court below. This new theory of the case was advanced for the first time by opposing counsel in oral argument before Your Honors on February 23, and was stated in the *rebuttal* portion of that argument. The Court Trustee had no occasion nor an opportunity to meet such a contention.

19. Under these circumstances it would seem that the statement concerning the lack of factual references by the Court Trustee was inaccurate. This is particularly true when it is noted that the brief of the Court Trustee did contain APPROPRIATE RECORD REFERENCES to support the findings made by the trial court. At pages 77 and 78 of the Court Trustee's brief, there are numerous record references under the heading "EVIDENCE CONSIDERED BY THE COURT". We submit that the opinion is inaccurate in its statement that reasonable record references were not made.

The theory adopted by the opinion seems to be that all an appellant needs to do is to say that he should not be required to prove a negative. If that be so then the appellee in every case must retry in the Court of Review the whole record. Such a theory completely destroys all the usual standards of presenting a case for appellate review.

The opinion overlooks the fact testified to by all of the City National witnesses, that its reorganization division and personnel did all the management work at Granada for Central Republic Trust Company as Trustee, and later for the receiver of that trust company, from the time Central Republic Trust Company began to manage the property. The witnesses for City National admitted that in fact City National had managed the property from the time that Central Trust Company was merged

into the Central Republic Trust Company. The transfer from receiver of Central Republic Trust Company to City National was a merely formal act, to recognize the situation that had existed in fact, since the Cody Trust Company went into receivership in December, 1933. In truth the City National was the successor to the management by the Cody Trust Company. At the trial the testimony of both the Cody Trust employees and City National employees, confirms the truth of this paragraph.

20. The orders of this court relating to consolidation of evidence and of oral argument led to confusion of the issues that had been purposely separated by each appeal. The Court Trustee suggests that these orders relating to consolidation put into effect a departure from the accepted and usual course of judicial action. The orders are prejudicial after the fact, to the Granada beneficiaries in all these appeals. In effect they accomplish denial of the statutory right to take separate appeals and to raise distinct issues.

21. These orders were the result of the repeated petitioning by opposing counsel who said, after the filing of some briefs, that the issues as drawn were disadvantageous to their successful defense. Their petition for consolidation, viewed rightly, were requests for this court to create new and more favorable issues after some briefs by the Court Trustee had been filed, and after the relation of the record to Appellees position was made apparent by said briefs.

22. The Court Trustee submits that Your Honors were in error in granting the prayers of such after the fact petitions. By that action this court aided the Appellees to change the rules, by which the appeals were to be conducted. Such procedure leads to confusion. Parties who prepare appeals will not know what the record is going to

be. To prevent confusion rules were promulgated by this court and by the United States Supreme Court in 1938, which provided that the record must be specified by the parties in the trial court within a certain time after the notice of appeal. The order of this court dated October 27, 1939, directed the reverse of this rule, by allowing those who had declined to specify the transcript of the evidence as a part of the record in some appeals, to incorporate the transcript from another appeal into the record of several appeals. This was done after some briefs are filed. Such procedural action would keep an appeal case in a fluid state, with changing issues and a possible changing of the affirmative burden.

23. The order of this court that all appeals be heard upon oral argument at one time caused further confusion which was detrimental to a clear view of the actual issues involved in each appeal separately. It prevented an accurate argument for more than one appeal. That your Opinion does not mention the matters chiefly discussed on the oral argument, shows how ineffectual it became under the circumstances.

24. The briefs filed in all appeals by counsel for City National show a determined effort to suggest confusion to the mind of this court as to the issues in each appeal. After the entry of the orders to change the records, there remained but a single safeguard for the orderly consideration of the separate issues in each appeal. That safeguard was the order of this court, *"that separate briefs be filed in the three causes"*. With a zealous application counsel for City National and Arlington Inc. hammered away to batter down this last line defense of orderly procedure. Each brief of theirs adopted by reference material from another brief in another appeal between other and different parties. Each brief of opposing counsel referred to other points argued in other briefs. In order to decide

any appeal Your Honors were asked by them to read the briefs in at least three appeals. Opposing counsel accomplished the consolidation which your order had forbidden. To all intents and purposes this court might as well have ordered a wholesale consolidation of all appeals because:

(1) There was consolidation of evidence from the record of some appeals to others.

(2) There was a consolidation (by reference) in the briefs of counsel for City National and Arlington, despite the contrary order entered by this court.

(3) There was a consolidation of appeals by means of a single oral argument.

(4) There was a consolidation of the appeals in the opinion, since only one opinion was written.

The studied effort of the counsel for opposing litigants has accomplished confusion. We submit that in the effort they have been eminently successful.

25. This strategy designed to confuse was not the act of novices. It was the practiced strategy used as flanking defense which was so successful in the court below that at the last moment that court failed to enter a judgment in conformance with the clear finding of facts previously made, which findings were supported by adequate evidence. The same method prevented the Superior Court Judge from seeing the picture as a whole in the foreclosure proceedings, although that Judge gave strong evidence of his personal suspicions as to the impropriety of acts done by City National. By his own handwriting at the conclusion of the decree he said:

> "The Court by the entry of this decree does not approve the accounts of the trustee in possession (City National) of the premises involved herein." (See Vol. 1, page 128 of printed record, or page 1279 Vol. III, of original record.)

26. In every court where these professional reorganizers for ten years have litigated the Granada affairs, they have used these tactics in a successful effort to prevent the court from realizing the nature of offenses committed against the uninformed creditors and bondholders of Granada. Each time evidence of the situation reached the court. But each court found the true situation so unpleasant to determine, that its judgment only hinted at the true facts. The opinion of this court at page 10, like the Superior Court admits these facts when it states that, "this situation may arouse some suspicion * * *."

27. The question which suggests itself is: Why if the situation is innocent does opposing counsel find it necessary to resort to confusing consolidation? Why becloud the real issues involved? Why this repeated device for confusion? Why the continued petitions to this court of Appeal to consolidate all appeals?

28. The answer is apparent. In the District Court the strategy was too long delayed. That court made the findings of fact here attacked by City National. That mistake was not repeated here. As soon as two appeals could be taken, consolidation was asked for. The first petition to consolidate was filed before this Court of Appeal had heard any one of the Granada appeals then pending. Petitions about consolidation were repeated, even after briefs had been filed in some of these causes. The barrage was kept up by cross references in the briefs, and by a single consolidated oral argument.

29. The opinion filed March 24, 1940 by Your Honors, indicates that the court did not review the entire record or the brief of the Court Trustee. The Court Trustee wishes to remind Your Honors that there are over 400 former bondholders of the debtor corporation which reside all over the country. The primary duty of fair deal-

ing with them falls upon Your Honors. This Court Trustee recognizes that he has a duty to perform both for the bondholders and this court. He respectfully submits however, in view of the orders entered by this court, the rules of this court limiting the extent of briefs, the solemn duty of this court in a reorganization case, and the involved nature of the record (created by opposing counsel), that Your Honors may not have read the record in these appeals as accurately as it should have been read.

30. Since the briefs in the present appeals were prepared the Illinois Appellate Court has handed down an excellent opinion that reviews the Illinois Supreme Court decisions on the matter of the burden of proof as related to the breach of fiduciary relationships. The material portions of that opinion are set forth below. The case so decided is *Goranson* v. *Solomonson,* 25 N. E. (2d) 930 at 931 and 932.

> "The law is well settled that where a fiduciary relation exists between parties, especially as between attorney and client, the utmost good faith must be exercised in all dealings by the attorney to his client. One of the earlier cases is *Ross* v. *Payson,* reported in 160 Ill. 349, and on page 358, 43 N. E. 399, 401, we find the following: 'Thus, it is said, in Story's Equity Jurisprudence (section 310): The situation of an attorney or solicitor puts it in his power to avail himself, not only of the necessities of his client, but of his good nature, liberality, and credulity, to obtain undue advantages, bargains and gratuities. Hence the law, with a wise providence, not only watches over all the transactions of parties in this predicament, but it often interposes to declare transactions void which, between other persons, would be held unabjectionable.' In *Jennings* v. *McConnel,* 17 Ill. 148, Chief Justice Scates, rendering the opinion of the court, quoted with approval the foregoing language, and said (17 Ill. page 150): 'And this is applicable to contracts or gifts generally, while the confidential relation continues, and is not confined to

particular property about which the attorney may have been employed. It is not required that a client should establish fraud or imposition—the onus of proof—upon showing the relation when the contract or gift was made, is upon the attorney to show fairness, adequacy and equity; and upon failure to make proof, courts of equity treat the case as one of constructive fraud.' The doctrine here announced has never been departed from by this court, but often reiterated. *Alwood* v. *Mansfield,* 59 Ill. 496; *Laclede Bank* v. *Keeler,* 109 Ill. 385; *Morrison* v. *Smith,* 130 Ill. 304, 23 N. E. 241; *Elmore* v. *Johnson,* 143 Ill. 513, 32 N. E. 413, 21 L. R. A. 366, 36 Am. St. Rep. 401.

"This case has been cited with approval in *Ringen* v. *Ranes,* 263 Ill. 11, 104 N. E. 1023; and *Warner* v. *Flack,* 278 Ill. 303, at page 307, 116 N. E. 197, 198, 2 A. L. R. 423, in which it is said: 'The procuring of the conveyances to the defendants from their client was an independent transaction, entered into after the trust deed had been obtained. The demurrer admits that during the existence of the relation of attorney and client the defendants purchased their clients property. In such case it is not necessary to show fraud or imposition on the client, but the burden is thrown upon the attorney of proving the perfect fairness, adequacy, and equity of the transaction, and upon his failure to make such proof a court of equity will treat the case as one of constructive fraud.'

"In the more recent case of *Masterson* v. *Wall,* 365 Ill. 102, at page 110, 6 N. E. 2d 161, 165, we find the following: 'Where a fiduciary relation exists, the burden of proof is on the grantee or beneficiary of an instrument executed during the existence of such relationship to show the fairness of the transaction, that it was equitable and just and that it did not proceed from undue influence. *Suchy* v. *Hajicek* (364 Ill. 502), 4 N. E. (2d) 836; *Allen* v. *McGill, supra* (311 Ill. 170, 142 N. E. 470); *Rutherford* v. *Schneider,* 307 Ill. 28, 138 N. E. 181; *Pillsbury* v. *Bruns, supra* (301 Ill. 578, 134 N. E. 103); *Dowie* v. *Driscoll,* 203 Ill. 480, 68 N. E. 56. This rule applies to contracts between client and attorney made during the existence of such relation and afterwards attacked by the client. *Warner*

v. *Flack*, 278 Ill. 303, 116 N. E. 197, 2 A. L. R. 423; *Willin* v. *Burdette*, 172 Ill. 117, 49 N. E. 1000; *Ross* v. *Payson*, 160 Ill. 349, 43 N. E. 399; *Morrison* v. *Smith*, 130 Ill. 304, 23 N. E. 241; *Jennings* v. *McConnel*, 17 Ill. 148.'

"The law is clearly stated in these cases, that if the relation of attorney and client exists (any fiduciary relation), then if a contract is entered into between the parties, that the burden of proof is upon the defendant to show that the same was entered into fairly, and that the client had been advised fully in regard to his rights in the matter."

This rule is applicable. The rule provided by Section 70d5 of the Bankruptcy Act is applicable. The rule in *Peacock Food Products Case* also is applicable. The fact of existence of fiduciary relationship of City National, Committee and Counsel, is unquestioned by anyone in this record. A rehearing is requested.

Respectfully submitted,

Weightstill Woods,
Court Trustee.

Endorsed: Filed April 10, 1940. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the eighteenth day of April, 1940, there was filed in the office of the Clerk of this Court, in causes Nos. 6986 and 7060 (also cause No. 7061), a motion for leave to file a printed summary of substantial evidence, etc., which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term 1939, April Session, 1940.

In the Matter of
Granada Apartments, Inc.,
a corporation,
Debtor.

Appeals 6986 and 7060, 7061.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

MOTION BY COURT TRUSTEE MADE APRIL 18, 1940.

The Court Trustee makes motion, that in the event a rehearing is allowed, Your Honors will order permission for the Court Trustee to file within twenty days after the order for rehearing, a printed summary of substantial evidence from the original transcript of record, arranged under and in support of the findings of fact made by the District Court.

In explanation of this motion, suggestions are herewith filed.

Respectfully submitted,
Weightstill Woods,
Court Trustee.

Suggestions to Support Motion by Court Trustee.

The petition for rehearing is intended to illustrate by examples, the contention by the Court Trustee that the Opinion by this court filed March 26, 1940, reverses the fair meaning of basic documents, about the wording of which no dispute arose at the trial or on review; and that the Opinion disregards primary principles of equity between fiduciaries and beneficiary certificate holders. Reasonable space limitations set by rules, prevented doing more than that. The legal principles and undisputed documentary facts, urged by the Court Trustee by briefs and by petition for rehearing, it is submitted are ample and sufficient to require confirmation of the findings made by the District Court, and to dispense with any need to review the factual record as a whole.

However, the Court Trustee does not stand on ceremony. Without lessening his emphasis on legal principles that are applicable, and not withdrawing from his position, the Court Trustee is willing to go through this original transcript of record and prepare a detailed arrangement of the factual material in relation to each one of the findings of fact made by the District Court. As an officer of the court he wishes to assist by any means the court desires. He asks permission to prepare from the transcript a printed summary of substantial evidence, for use by the court under the circumstances set forth in the motion to which these suggestions are attached. The volume of the record brought here for these appeals was far too large for an analysis of detail evidence to be included within the limits permitted by the rules, for briefs or petition for rehearing. Said documents so state.

In these cases at bar, no one contends that there ever was any fair disclosure to any of the bondholders or any of the creditors. There was failure to disclose and turnover Granada documents to the Court Trustee. Even the plan filed in the District Court and by Committee and Counsel, makes no fair disclosure. By means of the proceedings in the District Court, which are now before this court, the Court Trustee has assembled what documents and other evidence he could learn were available. If City National and Associates had obeyed the order in May 1937, and had turned over all funds and documents in hand to the Court Trustee, a concise record would

have been made in the District Court and for these appeals. That was never done. Even now the Indenture Trustee, the Indenture Committee and their Counsel, are refusing to make any adequate disclosures to this court of the fairness of their conduct. In the District Court they criticized severely the Court Trustee for asking an inquiry; and in this court they insist upon placing the entire burden upon the Court Trustee. They say that they should not be asked to prove a negative. If there ever was a complete reversal of the substantive law of fiduciaries, this is it. If there ever was a sheer use of procedure to bar proper discovery for beneficiaries, this is it.

Under the Illinois cases of *White* v. *Sherman,* 168 Ill. 589, 605, 616, and *Kinney* v. *Heitman,* 373 Ill. 415, no receipts nor release, nor court proceedings between the Indenture Trustee and beneficiaries, amount to an adjudication. nor to an act binding upon the beneficiary, unless beforehand there was a complete disclosure openly made by the fiduciary, directly to the beneficiaries, of all material facts.

In the case of *In Re Clark's Will,* 242 N. Y. S. 210, (1930) the court pointed out that higher duties are imposed upon and higher abilities expected from a *trust company* than from an individual. At page 220 the court said:

> "In trust relations these days, when trust companies have entered the business, much more is expected from a corporate trustee than from the old fashioned individual executor or trustee. Trust companies seek this character of business, claiming that they are specially qualified and financially responsible."

The necessity for this high degree of fidelity and ability is also expressed by the Supreme Court of Wisconsin in 1926, in the case of *Harrison* v. *First Wisconsin Trust Co.,* 191 Wis. 23, 209 N. W. 945, 947; and in the case of *Busby, et al.* v. *First National Bank of Chicago,* 288 Ill. App. 500, 520, 6 N. E. (2d) 451, 459, the Illinois Appellate Court confirmed that requirement when a Trust Company is trustee.

In 1934 in the case of *United States National Bank & Trust Company* v. *Sullivan,* 69 Fed. (2d) 412, 415, Your Honors pointed out that,

> "Good faith alone will not protect a trustee, but he must also exercise diligence, prudence and absolute fidelity."

In the Superior Court foreclosure proceeding, there was in reality no one representing the bondholders or the general creditors. They could not be affected by that proceeding. But opposing counsel treat that proceeding as a general reorganization. We submit that such is not the purpose or the nature of the foreclosure actions in Illinois. The Judge of Superior Court purposefully wrote a special limitation at the foot of his decree.

To use that proceeding as a basis to bar the general creditors or even the bondholders from asking a full disclosure and full hearing in the Federal Court, seems to the Court Trustee a mis-use, both of the foreclosure proceedings and of the reorganization proceedings in the Federal Court. They are unlike proceedings, with very different purposes, and with very different parties before them.

In this court City National and Associates took two separate appeals and made many preliminary motions for the general purpose of pretrying the appeals on their statements and repeated restatements about the record. This unusual procedure, and orders in this court in these Granada appeals wasted much time and attention of the Court Trustee. There were three or more motions by the opposition for consolidation. The record reads that Your Honors denied all the motions for consolidation, except that you allowed City National and Associates to consolidate their own two appeals, 6986 and 7060. Your order November 27, 1939, so provided. But a merger worse than consolidation has been accomplished by indirection. The absolute right to take and have heard separate appeals has been defeated by procedural manipulation by City National and its Counsel. The briefs by the Court Trustee followed your order; but the briefs for others did not do so. The Opinion as written, is based upon a practical consolidation accomplished by the counsel for City National, regardless of the orders by this Court denying consolidation.

The purpose of this printed summary of substantial evidence to be made from the transcript of record, is not to have this court weigh the evidence, nor to try the case de novo in this court, as the argument for the opposition seems to wish this court to do. The purpose is to supply a fair excerpt from the entire transcript to show, how inadequate, partisan and garbled is the printed record filed here by City National and its Associates. The pur-

pose also, is to demonstrate that all the findings of fact made by the District Court are firmly supported by substantial evidence in the record, if this court desires the Court Trustee to prepare such a demonstration in this court.

Respectfully submitted,

Weightstill Woods,
Court Trustee.

Received copies of foregoing Motion and Suggestions, this Eighteenth day of April, A. D. 1940.

Defrees, Buckingham, Jones & Hoffman,
By: Grant Johnson.

Mort D. and Frank Goldberg,
By: Frank Goldberg.

Endorsed: Filed April 18, 1940. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the twentieth day of April, 1940, there was filed in the office of the Clerk of this Court, an answer to petitions for rehearing, in causes Nos. 6986 and 7060, (also in causes Nos. 7061, 7086 and 7186), which said answer is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1939, January Session, 1940.

In the Matter of
Granada Apartments, Inc., a corporation,
Debtor.

Nos. 6986 and 7060.
City National Bank & Trust Company of Chicago, Etc., *et al.*,
Appellants,
vs.
Weightstill Woods, Court Trustee, *et al.*,
Appellees.

No. 7061.
Weightstill Woods, Court Trustee,
Appellant,
vs.
City National Bank and Trust Company of Chicago, *et al.*,
Appellees.

No. 7186.
Granada Apartments Hotel Corporation, a corporation, and Weightstill Wood, Court Trustee,
Appellants,
vs.
Indemnity Insurance Company of North America, *et al.*,
Appellees.

No. 7086.
Weightstill Woods, Court Trustee,
Appellant,
vs.
Arlington, Inc., a corporation,
Appellee.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

ANSWER TO PETITIONS FOR REHEARING.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
Counsel for Respondents.

Note: We adopt the caption employed by the Court in its opinion.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1939, January Session, 1940.

In the Matter of
Granada Apartments, Inc., a corporation,
Debtor.

Nos. 6986 and 7060.
City National Bank & Trust Company of Chicago, Etc., *et al.*,
Appellants,
vs.
Weightstill Woods, Court Trustee, *et al.*,
Appellees.

No. 7061.
Weightstill Woods, Court Trustee,
Appellant,
vs.
City National Bank and Trust Company of Chicago, *et al.*,
Appellees.

No. 7186.
Granada Apartments Hotel Corporation, a corporation, and Weightstill Wood, Court Trustee,
Appellants,
vs.
Indemnity Insurance Company of North America, *et al.*,
Appellees.

No. 7086.
Weightstill Woods, Court Trustee,
Appellant,
vs.
Arlington, Inc., a corporation,
Appellee.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

ANSWER TO PETITIONS FOR REHEARING.

May it please the Court:

The Petitions for Rehearing—coupled with the "Motion by Court Trustee made April 18, 1940"—are amazing documents.

The fundamental purpose of petitions for rehearing is,

of course, to assist the Court in pointing out any matters which may have been "misapprehended or overlooked."

Instead—we find a "lecture" to the Court concerning its duties—and a charge (in effect) that the Court did not seem to understand what it was doing. In addition, a ranting and vicious attack is made upon Appellant Counsel. Needless to say, we have smarted under the charges of fraud and conspiracy made against us by the Court Trustee, but have endeavored to treat them with the restraint befitting those who have practiced at the Bar of this Court for many years. Such attacks are of the irresponsible "smearing type"—and it seems to us, in simple justice, call for the rebuke that is so richly deserved.

The "re-argument" does not merit reply. *The appeals have been fully heard, understood, and no points have been "overlooked or misapprehended."*

Respectfully submitted,
Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
Counsel for Respondents.

Endorsed: Filed April 20, 1940. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the seventh day of May, 1940, the following further proceedings were had and entered of record, to-wit:

Tuesday, May 7, 1940.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Walter E. Treanor, Circuit Judge.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank and Trust Company of Chicago, etc., *et al.*,
Appellants,
6986, 7060
vs.
Weightstill Woods, etc., *et al.*,

In the Matter of
Granada Apartments, Inc.,
Debtor.

Weightstill Woods, etc., *et al.*,
Appellants,
7061
vs.
City National Bank and Trust Company of Chicago, etc., *et al.*,
Appellees.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the Court that the petition for a rehearing of these causes be, and it is hereby, denied.

And afterwards, to-wit: On the tenth day of May, 1940, there was filed in the office of the Clerk of this Court, in causes Nos. 6986 and 7060 (also cause No. 7061) a motion to stay mandate, etc., which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1939, April Session, 1940.

In the Matter of
Granada Apartments, Inc.,
a corporation,
Debtor.

Appeals 6986 and 7060, 7061.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

PROOF OF SERVICE.

We acknowledge receipt this May 10, 1940, of copies of motions and suggestions to stay mandate and to certify the record in the appeals mentioned above.

Defrees, Buckingham, Jones & Hoffman,
By: Defrees, Buckingham, Jones & Hoffman.
Mort D. and Frank Goldberg,
By: Frank Goldberg.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1939, April Session, 1940.

In the Matter of
Granada Apartments, Inc.,
a corporation,
Debtor.

Appeals 6986 and 7060, 7061.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

MOTIONS BY COURT TRUSTEE.

Weightstill Woods as Court Trustee respectfully asks that the mandate be stayed pending disposition of these appeals on petitions for certiorari to the Supreme Court of the United States.

Also the Court Trustee asks that the Clerk of this court certify to the Supreme Court, the proceedings had in this court in these appeals; and that the Clerk also be directed to send to the Clerk of the Supreme Court, the original transcript sent here from the District Court by a special order.

Respectfully submitted,
Weightstill Woods,
Court Trustee.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1939, April Session, 1940.

In the Matter of
Granada Apartments, Inc.,
a corporation,
Debtor.

Appeals 6986, and 7060, 7061.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

SUGGESTIONS BY COURT TRUSTEE.

In support of his motions for stay of mandate and for certification of the record to the Supreme Court of the United States, the Court Trustee respectfully suggests that he desires to seek a review in that court by writs of certiorari, and that it is necessary to have in that court, the original transcript which has been sent here from the District Court, for the reason that this court made special orders permitting reference to the original transcript, outside of and independent of the printed transcript of record which was filed in this court.

Respectfully submitted,

Weightstill Woods,
Court Trustee.

Endorsed: Filed May 10, 1940. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the sixteenth day of May, 1940, the following further proceedings were had and entered of record, to-wit:

Thursday, May 16, 1940.

Court met pursuant to adjournment.

Before:

Hon. J. Earl Major, Circuit Judge.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank and Trust Company of Chicago, etc., *et al.*,
6986, *Appellants*,
7060 *vs.*
Weightstill Woods, etc., *et al.*,
Appellees.

In the Matter of
Granada Apartments, Inc.,
Debtor.

Weightstill Woods, Court Trustee, *et al*,
Appellants,
7061 *vs.*
City National Bank and Trust Company of Chicago, etc., *et al.*,
Appellees.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

On motion of Weightstill Woods, Court Trustee, it is ordered that the mandates of this Court in these cause be, and they are hereby, stayed pursuant to Rule 25 of the rules of this Court.

It is further ordered that the Clerk of this Court transmit to the Supreme Court of the United States the original transcript of record sent to this Court from the District Court of the United States for the Northern District of Illinois, Eastern Division, by a special order.

And afterwards, to-wit: On the fourteenth day of June, 1940, there was filed in the office of the Clerk of this Court, in causes Nos. 6986 and 7060 (also in causes Nos. 7061 and 7086) a consented motion for a further stay of mandate, which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1939, April Session, 1940.

In the Matter of
Granada Apartments, Inc.,
a corporation,
Debtor.

Appeals 6986 and 7060, 7061 and 7086.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

PROOF OF SERVICE.

We acknowledge receipt this June 14th 1940, of copies of motions and suggestions to extend stay of mandate; and we make no objection to the order therefor.

Defrees, Buckingham, Jones & Hoffman,
By: Vincent O'Brien.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1939, April Session, 1940.

In the Matter of
Granada Apartments, Inc.,
a corporation,
Debtor.

Appeals 6986 and 7060, 7061 and 7086.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

MOTION BY COURT TRUSTEE.

Weightstill Woods, as Court Trustee, respectfully asks that the stay of mandate be extended an additional 40 days for completion of preparation of record, and completion of petitions for certiorari to the Supreme Court of the United States.

Respectfully submitted,
Weightstill Woods,
Court Trustee.

SUGGESTIONS BY COURT TRUSTEE.

In support of his motion for 40 days extension of the stay of mandate, pending completion of records and petitions for certiorari to the Supreme Court of the United States, the Court Trustee respectfully suggests that substantial progress has been made in preparing the records and petitions in these several matters, but that an additional 40 days is necessary to complete and file the record and the petitions before the Supreme Court at Washington.

Respectfully submitted,
Weightstill Woods,
Court Trustee.

Endorsed: Filed June 14, 1940. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the fifteenth day of June, 1940, the following further proceedings were had and entered of record, to-wit:

Saturday, June 15, 1940.

Court met pursuant to adjournment.

Before:

Hon. J. Earl Major, Circuit Judge.

In the Matter of Granada Apartments, Inc., Debtor.	Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.
City National Bank and Trust Company of Chicago, etc., *et al.*, *Appellants*,	
6986, 7060 *vs.*	
Weightstill Woods, etc., *et al.*, *Appellees.*	
In the Matter of Granada Apartments, Inc., Debtor.	
Weightstill Woods, etc., *et al.*, *Appellants*,	
7061 *vs.*	
City National Bank and Trust Company of Chicago, etc., *et al.*, *Appellees.*	
In the Matter of Granada Apartments, Inc., Debtor.	
Weightstill Woods, Court Trustee, *Appellant*,	
7086 *vs.*	
Arlington, Inc., *Appellee.*	

On motion of Weightstill Woods, Court Trustee, it is ordered that the mandates of this Court in these causes be, and they are hereby, stayed for an additional forty days.

And afterwards, to-wit: On the twenty-second day of June 1940, there was filed in the office of the Clerk of this Court, in causes Nos. 6986 and 7060, a motion to dismiss appeals, etc., which said motion is in the words and figures following, to-wit:

IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, 1939, APRIL SESSION, 1940.

In the Matter of GRANADA APARTMENTS, INC., a corporation, Debtor. Appeals 6986 and 7060.	Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

MOTIONS, SUGGESTIONS AND NOTICE.

WEIGHTSTILL WOODS,
Counsel for Court Trustee,
77 West Washington Street.
Chicago, Illinois.

THE GUNTHORP-WARREN PRINTING COMPANY, 816 WEST JACKSON, CHICAGO

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INDEX TO MOTIONS, SUGGESTIONS AND NOTICE.

	PAGE
Proof of Service	1
Notice	2
Motions to Dismiss Appeals for Want of Jurisdictiton: and Motions to Retax Costs	3
Suggestions by the Court Trustee in Support of Motions to Dismiss Appeals and Motions to Retax Costs	4
Suggestions as to Costs	11

List of Authorities.

Cases and Articles.

Bender v. Davis, 365 Ill. 389 10

In Re Dickinson, 309 U. S. ....., 60 S. C. R. 395 ..... 10, 11

Finletter Reorganizations, page 611 10

Francke v. Eadie, 301 Ill. App. 254, 259 10

Illinois Digest (West) App. & Err. #624 10

3 Ohlinger Federal Practice, 949, 953, 956 10

In Re Prudence Bonds Corporation, 111 Fed. (2d) 37 ..... 10, 11

Shulman v. Wilson-Sheridan Hotel Company, (86 Fed. (2d) 898, 301 U. S. 172) 4

Union Trust Company of Maryland v. Townsend, 101 Fed. (2d) 903 at 914 10

Wayne U. G. Co. v. Owens I. G. Co., C. C. A. 4, 83 Fed. (2d) 98, 84 Fed. (2d) 965 10

West v. Irwin, 54 F. 419, C. C. A. 7 ..... 8, 10

STATUTES CITED.

Bankruptcy Act:
Section 25 5
Section 250 ..... 9, 12, 13

RULES.

Federal Rules of Civil Procedure 6
Rule 73 (g) of Rules of Civil Procedure 6
Rules by the Seventh Circuit Court of Appeals:
Rule 7 and Rule 42 6
Supreme Court General Orders in Bankruptcy, No. 36. 5

IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, 1939, APRIL SESSION, 1940.

In the Matter of GRANADA APARTMENTS, INC., a corporation, Debtor. Appeals 6986 and 7060.	Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

PROOF OF SERVICE.

In the appeals mentioned above, we acknowledge receipt this June 22, 1940, of printed copies of motions and suggestions by the Court Trustee.

DEFREES, BUCKINGHAM, JONES & HOFFMAN,

By: .....

Counsel for Appellants.

NOTICE.

Appellants and their counsel are advised that the within motions and suggestions are filed in the office of the clerk of said court on this June 22, A. D. 1940.

WEIGHTSTILL WOODS,
Counsel for Court Trustee,
77 West Washington Street,
Chicago, Illinois.

MOTIONS TO DISMISS APPEALS FOR WANT OF JURISDICTION: AND MOTIONS TO RETAX COSTS.

At the same term and same session of this court, Weightstill Woods, as Court Trustee, respectfully presents these motions:

(a) That the Circuit Court of Appeals will withdraw its Opinion and vacate all orders against the Appellees, in appeals 6986 and 7060.

(b) That the court will dismiss appeal 7060 for lack of jurisdiction at any time, and assess all costs against the Appellants.

(c) That the court will quash the citation and dismiss appeal 6986, and affirm the decree dated May 2, 1939 as to said appeal, and assess all costs against Appellants.

(d) In addition further motions that the court will retax the costs in each of said appeals, and charge all expense for printing the record in each of said appeals to the Appellants.

In support of said motions, suggestions herewith are filed.

Respectfully submitted,

WEIGHTSTILL WOODS,

Counsel for Court Trustee.

SUGGESTIONS BY THE COURT TRUSTEE IN SUPPORT OF MOTIONS TO DISMISS APPEALS AND MOTIONS TO RETAX COSTS.

---

1. On September 16, 1939 and November 8, 1939, the Court Trustee made motions for dismissal of appeals 6986 and 7060 in this court. Both motions were denied. Before that on June 17, 1939, the Court Trustee filed in this Circuit Court of Appeals, his answer and objections to petition for leave to appeal. Those objections were overruled and appeal granted by this court on June 22, 1939 as cause 6986. Opposing counsel relied principally upon the Dickinson case, (104 Fed. (2d) 771), which was then a recent Opinion by this Circuit Court of Appeals.

2. Later these and other Granada appeals were argued and submitted on February 23, 1940. Thereafter, on March 11, 1940, the Supreme Court at Washington sustained the Dickinson case, and wrote an Opinion which appears at 309 U. S. .....; 60 S. C. R. 395, in the latest advance sheets.

3. The full effect of the decision by this court and the Supreme Court, in *Shulman v. Wilson-Sheridan Hotel Company,* (86 Fed. (2d) 898, 301 U. S. 172), did not appear in relation to section 250 of the Bankruptcy Act, until the Opinions by this Circuit and the Supreme Court in that case, were compared with the ruling made by the Circuit Court of Appeals for the Second Circuit, in *re Prudence Bonds Corporation,* 111 Fed. (2d) 37, and the ruling made by the Supreme Court in the Dickinson case. These latter two Opinions are just now available in the current advance sheets.

4. Appeal 7060 depends upon a notice of appeal filed in District Court on June 1, 1939. Appeal 6986 is based

upon a petition for leave filed in Seventh Circuit Court of Appeals on June 12, 1939. These appeals compete with each other. Both are taken by the same parties, for the same purposes, and from one decree dated May 2, 1939.

5. The appeal by notice on June 1, 1939, was an election to proceed in that manner, under Section 25 of the Bankruptcy Act. That notice of appeal by City National and associates was never withdrawn but stands. That notice precludes the competing appeal by petition to this Circuit Court of Appeals on June 12, 1939, based upon Section 250 of the Bankruptcy Act. The Court Trustee urges that it is a violation of statute and unjust, to assault Appellees with multiple and inconsistent appeals about the same matter. Each of those statutes (Sections 25 and 250) covers the field exclusively. To use both at one time is an act of legislation. It is siamese twin practice. It would be blunderbus procedure.

6. Appellants chose to file the transcript of record in appeal 7060, under the notice of appeal (Section 25) filed in the District Court. August 19, 1939 was the date the transcript of record was so filed. This fact is established by the court docket, and is confirmed by recitals by Appellants in support of numerous motions (page 3 of suggestions and motion by Appellants in 6986 filed September 8, 1939, is one example), and by statements in the orders of this Court of Appeals.

7. The Supreme Court General Orders in Bankruptcy in effect since February 13, 1939, "No. 36 Appeals" provides:

> "Appeals shall be regulated, *except as otherwise provided in the Act,* by the rules governing appeals in civil actions in the courts of the United States, including the rules of civil procedure for the District Court of the United States."

The present Circuit Court of Appeals rules were effective November 10, 1939. That was after these Granada

events. But the rules are merely declaratory. The courts and the profession had known for a year that the Chandler Act and the rules of Federal Rules of Civil Procedure, which were effective for all purposes in September, 1938, had profoundly affected and made obsolete, prior rules and practice in the District Courts and the Circuit Court of Appeals. The Seventh Circuit Court of Appeals had so announced on October 4, 1938, as follows:

> "RULE 42. (a) The existing Rules of the United States Circuit Court of Appeals for the Seventh Circuit, as amended November 17, 1937, are hereby amended so as to harmonize with the 'Rules of Civil Procedure,' adopted by the Supreme Court of the United States pursuant to the Act of Congress of June 19, 1934 (c. 651) and which became effective September 16, 1938.
>
> "(b) Any rule of this Circuit Court of Appeals which is covered by the 'Rules of Civil Procedure' is deemed to be modified or superseded by said 'Rules of Civil Procedure' and the applicable portions of said 'Rules of Civil Procedure' govern."

It is plain that neither old Rule 14 nor new Rule 31 by Seventh Circuit Court of Appeals, could possibly be applicable to the situation at bar, where three appeals were taken from the same order May 2, 1939; two by notice on June 1st and 10th and one by petition for leave on June 12, 1939. Circuit rule 10 provides:

> "The record on appeal shall be prepared and the transcript thereof filed in this court, as provided in Rules 75 and 76 of the Federal Rules of Civil Procedure."

(8) Rule 7 by the Seventh Circuit Court of Appeals provides:

> "The rules of the Supreme Court of the United States and the Federal Rules of Civil Procedure, whenever applicable, shall be followed."

Said Rules of Civil Procedure provide:

> "RULE 73 (g). DOCKETING AND RECORD ON APPEAL. The record on appeal as provided for in Rules 75 and

76 shall be filed with the appellate court and the action there docketed within 40 days from the date of the notice of appeal; except that, when more than one appeal is taken from the same judgment to the same appellate court, the district court may prescribe the time for filing and docketing, which in no event shall be less than 40 days from the date of the first notice of appeal. In all cases the district court in its discretion and with or without motion or notice may extend the time for filing the record on appeal and docketing the action, if its order for extension is made before the expiration of the period for filing and docketing as originally prescribed or as extended by a previous order; but the district court shall not extend the time to a day more than 90 days from the date of the first notice of appeal."

Said 40 days expired July 11, 1939. Appellants did not until July 19, 1940 ask the Court of Appeals, and they never asked the District Court, to enlarge the time for filing the record in this appeal by leave. Without the record being filed in the Court of Appeals on or before July 11, 1939, that court after that date had no jurisdiction for appeal 6986. Appeals 7060 and 7061 by notice June 1, and June 10, 1939, were not filed in Seventh Circuit Court of Appeals until August 19, 1939.

9. In 6986 Appellants filed only a short record consisting of decree and four items on July 19, 1939. That was filed without leave of court, without notice to anyone, and was prepared on a special short praecipe that was never served on anyone.

10. Two days later Appellants secured an order from the Circuit Court of Appeals on July 21, 1939 for leave to file a complete record in 6986 on or before September 16, 1939. To obtain that order, Appellants' counsel stated in support of their motion filed July 20, 1939 these words in writing:

"8. That the complete record, unless this motion is granted in this appeal (No. 6986) must be filed with the Clerk of this Court on or prior to July 22, 1939."

It is submitted that statement was untrue. The time had expired. Jurisdiction was gone. The court was misled.

11. Appellants abandoned and did not compy with that order of July 21, 1939 obtained in that manner. That order was void because the time for filing the record, had expired before the petition by Appellants to enlarge the time was served or filed; and was void because contrary to 73 g of the rules of civil procedure which vests the exclusive power in the District Court to enlarge the time where more than one appeal is taken; and was void because the District Court was never asked to enlarge the time as to appeal 6986. Appeals 6986, 7060 and 7061 are expressly all from one order, May 2, 1939. Appellees say that such status leaves appeal 6986 without any supporting record.

12. Appellants sought to remedy that situation by their motion on September 8, 1939, to consolidate the appeals 6986 and 7060. Over the objection of the Court Trustee, Your Honors granted that motion and ordered on October 4, 1939:

> "(b) That the transcript of record now filed with the Clerk of this Court in cause 6986 and the transcript of record now filed with the Clerk of this Court in the above entitled cause number 7060, be consolidated and stand as the single consolidated transcript of record in both of said appeals as so consolidated."

13. Because this Court of Appeals had lost jurisdiction of appeal 6986 on July 11, 1939, by failure of Appellants to file the record, and because appeal 7060 was not docketed until August 19, 1939, and also because appeal 7060 fails for want of jurisdiction under the ruling of this Court and the Supreme Court in the Shulman and Dickinson cases; the order for consolidation also fails and should be vacated. It is void for the additional reason that the Court of Appeals having lost jurisdiction of appeal 6986 by failure of Appellants to file record in time, could not regain or revive that vanished power. *West* v. *Irwin*, 54 F. 419, C. C.

A. 7. The order was void also because it was applied for more than 90 days after June 1, 1939, when the first appeal was taken from decree of May 2, 1939. That overall time limitation is set by rule 73 (g) quoted above at paragraph 8.

14. It is submitted that the items for which Appellants in 6986 and 7060 seek relief, are of the same character as the items in the Prudence Bonds case. There appeals, like unto these at bar, were dismissed in reliance upon and in conformity to the ruling by the Supreme Court cases, *re* Dickinson and *re* Shulman. Section 250 of the Bankruptcy Act covers "allowances for compensation and reimbursement." That is all that Appellants seek in appeals 6986 and 7060. Appellants so admit by their answer (p. 12) filed herein November 16, 1939. That matter is *res judicata*. Your Honors so ruled when you dismissed their appeal 6744 in this court (104 Fed. (2d) 970 at 972). Certiorari was denied at Washington on November 6, 1939 as cause No. 469; 308 U. S. .....

15. In that Granada appeal 6744 your Honors ruled at page 972:

> "It would seem, on general principles, that neither the Bank Trustee, nor the Committee, (both were Appellants in that appeal and the present appeals) had any interest in the proceedings after the plan of reorganization, approved by the court, had been consummated, with the exception of the former's claim No. 9, which we shall assume was pending at the time of the entry of the order appealed from. The deed of trust from which the former received its authority, and the bonds deposited with the latter and from which it received its authority, were as heretofore recited, cancelled and delivered to the reorganized company and thus the basis upon which both Appellants participated in the reorganization proceedings were destroyed. * * *
>
> "The motion by Appellee (the Court Trustee in that appeal and likewise in the present appeals) to dismiss the appeal for the want of jurisdiction, has

heretofore been denied, but the motion being renewed, there is no doubt of our authority, as well as our duty to reconsider it. The principal contention made by Appellee in support of such motion is that neither of the Appellants is such a party to the proceeding below as to have any right or authority to appeal from the order in question. After giving the situation careful study, we come to the conclusion that Appellees' position must be sustained and that our order heretofore entered denying the motion to dismiss, was improvident."

16. It follows that Appellants are out of court as to both their appeals 6986 and 7060.

APPEALS BY WRONG MANNER WILL BE DISMISSED, BECAUSE THEY DO NOT CONFER ANY JURISDICTION.

In Re Prudence Bonds Corporation, 111 Fed. (2d) 37.

In Re Dickinson, 309 U. S. ....., 60 S. C. R. 395.

Union Trust Company of Maryland v. *Townsend*, 101 Fed. (2d) 903 at 914.

Wayne U. G. Co. v. *Owens I. G. Co.*, C. C. A. 4, 83 Fed. (2d) 98, 84 Fed. (2d) 965.

3 Ohlinger Federal Practice, 949, 953, 956.

Finletter Reorganizations, page 611.

Bender v. *Davis*, 365 Ill. 389.

Francke v. *Eadie*, 301 Ill. App. 254, 259.

AN ORDER EXTENDING THE TIME FOR FILING THE TRANSCRIPT OF RECORD ON APPEAL, MADE AFTER THE TIME HAS EXPIRED IS INEFFECTIVE AND VOID AND THE APPEAL MUST BE DISMISSED.

West v. *Irwin*, 54 F. 419 (C. C. A. 7).

Illinois Digest (West), App & Err. #624.

17. After a careful view of the entire record the Court Trustee deems it is his duty again to direct the atten-

tion of this court to the status of these appeals, in the light of the Supreme Court Opinion in the *Dickinson* case, 309 U. S. ....., as applied in the *Prudence Bonds* case (111 Fed. (2d) 37), and to ask that the Opinion by this court be recalled and that each of the appeals 6986 and 7060 be dismissed for want of jurisdiction at any time, with costs against appellants.

SUGGESTIONS AS TO COSTS.

18. In support of additional motions to retax the costs in appeals 6986 and 7060, the Court Trustee respectfully refers to the language of Section 250 of the Bankruptcy Act, which requires that in this court such appeals "shall be summarily heard upon the original papers." It is submitted that the inevitable effect of that language is to dispense with all need for printing the record of such appeals. By the statute the parties are excused from such printing costs.

19. It follows that where Appellants as in this case apply to court for leave to print certain portions of the record, and the order (October 4, 1939) is entered to that effect on their motion as was done in these appeals, without the consent or the approval of the Appellees, there is no power for the court to charge that expense against the Appellees. The Court Trustee opposed the motion for that order (paragraph 11 of reply by Court Trustee filed September 26, 1939, and paragraph J of suggestions to motion filed November 8, 1939, in appeal 6986; and motion by Court Trustee filed in 7060 on November 8, 1939). These objections by the Court Trustee were overruled.

20. The printing was the voluntary *ex parte* action of the Appellants. To assess such items as costs against the Appellees, would defeat the purpose of Section 250

of the Bankruptcy Act; and would accomplish by judicial act, a repeal of the positive direction and command of Congress. When the court rules that section 250 is an exception excluding section 25, it rules also that section 250 is an exception excluding the costs act. This is a statutory court. The will of Congress controls. Such appeals "'shall be summarily heard upon the original papers."

(21) By diligent and personal examination of the court dockets and court records, made this week by the Court Trustee, the situation mentioned above at Paragraph 10 is now disclosed. The motion by Appellants on July 20, 1939, for an order to enlarge the time for filing a complete record, was a camouflage motion. Whatever was the intention of counsel for Appellants, they made no effort to comply with the order so obtained. Whatever their purpose was, the effect was to mislead the court and other counsel, by concealing the fact that jurisdiction had vanished on July 11, 1939. By that situation a vast amount of labor has been placed upon all parties in the case. These events are additional weighty reasons why the courts should tax all costs in these appeals against the Appellants.

22. Inasmuch as the Court Trustee advanced the moneys for printing the record that was printed in his appeal 7061, the Court cannot justify charging to the Court Trustee any of the expense of the record in 7060 or 6086, by carry over to 7061. The court expressly denied and refused consolidation with 7061 by its order November 27, 1939. Your refusal to consolidate was in accord with Section 250 of the Bankruptcy Act, which treats the subject matter of appeal 6986 "independently of other appeals in the same proceeding."

23. WHEREFORE the Court Trustee respectfully asks that

the court vacate all orders against the Appellees, withdraw the Opinion, and dismiss appeal 6986 and appeal 7060 for want of jurisdiction and/or affirm the decree of May 2, 1939 as to said appeals 6986; and assess all costs against the Appellants in each appeal.

24. By independent motions the Court Trustee asks that the court retax the costs for printing the record in appeals 6986 and 7060 against the Appellants pursuant to Section 250 of the Bankruptcy Act.

25. The Court Trustee respectfuly mentions again that the equities are not with the Appellants. When they omitted the language now quoted:

> "That as of September 30, 1936, the said cross-complainant (City National) *represents* it has on hand a balance of $1,608.56, which sum should be applied on the indebtedness found due in this decree in the above mentioned order of preference and priority. * * *
>
> "The Court by the entry of this decree does not approve the accounts of the trustee in possession (City National) of the premises involved herein."

from the printed summary of the Superior Court decree at page 515 Volume Two of the Printed Record, and failed to disclose otherwise to the Court that the Superior Court decree had not disposed of their claim, they caused this court to believe, and to state in its Opinion that that decree was *res judicata* when the contrary is the record fact.

Respectfully submitted,

WEIGHTSTILL WOODS,
Court Trustee.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

WEIGHTSTILL WOODS being first duly sworn, says that he is the Court Trustee in this cause; that he has personally and diligently examined the court dockets and records in these appeals; that he has read and considered the foregoing motions and foregoing suggestions; and says that the facts set forth therein are true, to the best of his knowledge and belief.

.....

Subscribed and sworn to before me this June 29, 1940.

.....

Notary Public, Cook County, Illinois.

Endorsed: Filed June 22, 1940. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the twenty-seventh day of June, there was filed in the office of the Clerk of this Court, in causes Nos. 6896 and 7060, an answer of appellants to the renew motions to dismiss appeals, etc., which said answer is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1939, April Session, 1940.

In the Matter of
Granada Apartments, Inc.,
a corporation,
Debtor.

Appeals 6986 and 7060.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

ANSWER OF APPELLANTS TO THE RENEWED MOTIONS OF WEIGHTSTILL WOODS, APPELLEE, TO DISMISS THE ABOVE APPEALS, ETC.

The Court Trustee's motion to dismiss appeal 7060 (the appeal by right) is predicated on the proposition that the appeal in this case involved only the question of fee allowances, and that, since affirmance of the Dickinson case, appeals from fee allowances can only be taken by leave; and also on the further proposition that, even if questions other than fee allowances were involved so that an appeal by right was necessary, it was not perfected within the time or in the manner provided by the law and the rules then in effect.

The Court Trustee's motion to dismiss appeal 6986 (the appeal by leave) is based on the proposition that the rules of this court then in effect did not govern the mode or method of taking an appeal by leave but that such an appeal was governed by the Rules of Civil Procedure and that the appeal was not perfected within the time or the manner provided by the latter rules.

This is the third time that the Court Trustee has presented motions to dismiss these appeals on substantially the same grounds. His original motions to dismiss, as well a his renewed motions for that purpose, were thoroughly answered and discussed, and each time were denied by this court.

We are now compelled, however, for the third time to answer.

I.

It Was Necessary in This Case to Appeal Both by Leave and by Right.

Both appeals were taken from a decree entered May 2, 1939 and from the findings of fact which by reference had been incorporated into that decree. The decree disposed of issues which arose on the final report and account of City National Bank and Trust Company of Chicago, as Indenture Trustee, on the claim of City National Bank and Trust Company of Chicago on its own behalf, on the petitions for fees and expenses of administration filed by the Committee and its counsel, the objections of the Court Trustee to all of the foregoing, and upon the counterclaim of the Court Trustee seeking to surcharge the Indenture Trustee with substantial sums for alleged wrongful acts and omissions in the management and operation of the mortgaged premises.

It is thus apparent that while the question of fee allowances is involved in the appeal there are many more vital questions involved which have nothing to do with fee allowances. As the question of fee allowances and expenses could only be raised by an appeal by leave and as all of the other various matters from which an appeal was sought could only be raised by an appeal by right, it was necessary to take an appeal by right and also an appeal by leave.

The fact that the appeal by leave raises other questions in addition to those involving fee allowances is not grounds for dismissal of that appeal, nor is the fact that the appeal by right includes the question of fee allowances ground for dismissal of that appeal, since there were questions left in each appeal for review which could be reviewed only by appeal taken in that manner. There is, therefore, no basis for the contention that by appealing by one method we were estopped to appeal by the other.

We do not elaborate on the issues involved to demonstrate that far more than the mere question of fee allowances was presented for review, for at this stage the court is just as familiar with the facts as we are.

II.

Both the Appeal By Right and By Leave Were Perfected in the Manner and Within the Time Provided By Applicable Law and Rules of Court.

A. The appeal by right—

We admit, as the Court Trustee contends, that the appeal by right is governed by the Rules of Civil Procedure. The court is familiar with the requirements of Rules of Civil Procedure 73 and 75 relating to appeals.

We filed our notice of appeal June 1, 1939, or within thirty days of the date of the entry of the decree appealed from. Accordingly, under Rule 73(g), we were required within forty days of June 1, 1939 to file the record in this court unless the District Court granted further time on motion made within the forty day period.

The claim of the Court Trustee is that the record not having been filed until August 19, 1939, which was more than forty days after the filing of the notice of appeal, there was no compliance with the rule and accordingly the appeal was not perfected.

It is true that on August 19, 1939 more than forty days had elapsed, but as the Court Trustee well knows, as is shown by his former motions, the time for filing had been extended by the District Court on July 7, 1939 and the record was in fact filed within the extended time. See the renewal of counter motion to dismiss made by the Court Trustee in appeal 6986, dated November 8, 1939, in paragraph 3 of which he says:

> "On July 7, 1939, appellant secured an order in District Court extending time until August 19, 1939 for docketing said case on appeal; and within said time did so docket said appeal in said Court of Appeals as Case No. 7060."

See also original transcript of record from the Clerk of the District Court, pages 477-478, at which appear our motion for enlargement of time and Judge Barnes' order of July 7, 1939 enlarging the time to August 19, 1939.

It is thus manifest that the record on the appeal by right was filed strictly in accordance with the requirements of the Rules of Civil Procedure.

B. The appeal by leave—

While it is true, as stated by the Court Trustee, that the Rules of Civil Procedure superseded all rules of this court which were conflicting, the fact remains that the Rules of Civil Procedure relate only to appeals by right and are entirely silent as to appeals to be taken by leave. An examination of Rule 73 of the Rules of Civil Procedure confirms this assertion.

This court recognizes that the Rules of Civil Procedure make no provision for method of appeal where the appeal is taken by leave, for in revising and amending its rules to conform to the Rules of Civil Procedure by way of rules effective November 10, 1939 and still in effect the method of taking an appeal by leave is prescribed by Rule 31 and is quite different than the rules governing appeals by right, as set forth in the Rules of Civil Procedure, and not substantially different than old Rule 13.

It follows that the procedure was controlled by the rules of the Circuit Court of Appeals in effect at the time the appeal by leave was taken and allowed, which rules remained in effect until November 10, 1939, when the present rules of this court became effective.

What then were those rules, and what did they provide? Rule 13, Section 1, provided among other things that the transcript should be filed with the Clerk of the Court of Appeals on or before the return day specified in the citation unless the time for filing was enlarged by a judge of the District Court *or by the Court of Appeals or some judge thereof.* Section 3 of Rule 13 provided that the citation must be returnable within thirty days from the date on which the appeal was allowed—which it was in this case. On June 12, 1939, we petitioned this court for leave to appeal, and on June 22, 1939 leave was allowed and citation issued returnable July 22, 1939. Accordingly, the record was due in this court July 22, 1939. But on July 19, 1939, a short record having been filed, we made a motion that this court enlarge the time for the filing of the full record, which was allowed on July 21, 1939, and the time extended to September 16, 1939. It is true, as stated in paragraph 10 of the Court Trustee's motion, that we did represent in connection with this motion for extension that

the complete record was required to be filed on or prior to July 22, 1939. That representation was and is true and accurate.

In view of the facts above stated, what does the Court Trustee mean and what basis has he for the statements made in paragraph 21 of his present motion, including the statement that the effect of our representation was to mislead the court and to conceal the fact that jurisdiction had vanished on July 11, 1939?

Before the expiration of the time for the filing of the full record so allowed by order of this court entered July 21, 1939, we filed the complete record from the District Court clerk's office with the clerk of this court on August 19, 1939 in appeal 7060, as noted under Point II-A above. That having been done, we did not wait until September 16, 1939 in appeal 6986 to file one and the same record as had been filed in 7060, but on September 8, 1939 we moved in each case that the two appeals be consolidated and that the record filed in appeal 7060, together with the short record theretofore filed in 6986, stand as the record in 6986. If this motion was granted there would be no need to file any further record in 6986 by September 16, 1939, or any other time.

Pursuant to that motion an order was entered by this court on October 4, 1939 consolidating the two appeals and providing, among other things, "that the transcript of record (the short record) then on file in cause number 6986 and the transcript of record then on file in cause number 7060 be consolidated and stand as the single consolidated transcript of record in both of said appeals as so consolidated.". (printed record 832.)

We thus complied with the requirements of the applicable rules of this court relating to appeals by leave.

Even if by any possibility the Rules of Civil Procedure rather than the then existing rules of this court controlled appeals taken by leave, the Court Trustee's contention that appeal 6986 should be dismissed because the record was not filed within the time fixed by the Rules of Civil Procedure would be without merit.

Prior to the adoption by this court of its present rules effective November 10, 1939, there was in effect Rule 14, which required appellants to file the transcript with the clerk of this court on or before return day. If the appellants failed to do so, the appellee could have the cause docketed and dismissed.

The present Rule 11, as adjusted to conform to the Rules of Civil Procedure relating to appeals in general, provides that the appellant shall file the transcript of the record within forty days from the date of the notice of appeal, and in Section 2 it says that if the appellant fails so to do the appellee may have the appeal docketed and dismissed. Both of these rules are substantially the same as the rule of the United States Supreme Court as to appeals taken there.

Now it always has been, and still is, the law both in this circuit and in the United States Supreme Court that if the appellant does not get the cause docketed and the record filed within the time prescribed by rule, nevertheless, the appellee may not have the appeal dismissed unless he presents his motion before the case is docketed and the record filed.

Southern Pine Company v. *Ward,* 208 U. S. 126;
West Chicago St. R. Co. v. *Ellsworth,* 77 Fed. Rep. 664 (C. C. A. 7);
Vogel v. *Saunders,* 92 Fed. Rep. (2d) 984 (C. C. A., D. C.).

The opinion of this court in *West Chicago St. R. Co.* v. *Ellsworth,* 77 Fed. Rep. 664 (C. C. A. 7), effectively explains and distinguishes the case of *West* v. *Irwin,* 54 Fed. 419, cited by the Court Trustee at page 10 of his motion.

The Court Trustee's first motion for dismissal of appeal 6986 was made September 16, 1939. But at that time our motion of September 8, 1939 to consolidate 6986 with 7060 and to have the record in 7060 (filed August 19, 1939), together with the short record on file in 6986, stand as the record in the consolidated causes was pending and was thereafter allowed. Hence the Trustee's motion to dismiss came too late.

It follows that even if the Rules of Civil Procedure have anything to do with the appeals taken by leave, nevertheless the Court Trustee's motion to dismiss for want of record within the time prescribed by those rules could not be granted.

III.

The Court Was Correct in Taxing the Costs Against the Court Trustee.

The Court Trustee's suggestion that all costs in both appeals should be taxed against appellants is predicated in the first instance on his assumption that the appeals were not perfected within the time and in the manner provided by the applicable statutes and rules and should therefore be dismissed. But as the fact is that both appeals were necessarily taken and were properly perfected, that claim of the Court Trustee for taxing costs against us is without basis.

The Court Trustee further suggests that the printing costs should be taxed against appellants because Section 250 of the Bankruptcy Act provides that appeals in fee allowances shall be summarily heard upon the original papers and that in appeal 6986 the record was printed. But it was of course necessary in the appeal by right under 7060 to have the record printed and, as we have heretofore pointed out, the two appeals were consolidated and only one printed record was filed as the printed record in both cases.

We submit that it is obvious that Section 250 of the Bankruptcy Act, which provides that appeals from fee allowances shall be heard summarily upon the original papers, is applicable only when the sole appeal taken is an appeal by leave of the Circuit Court of Appeals from fee allowances and is not applicable where an appeal is also taken from the decree in respect to matters other than fee allowances in which a printed record is required.

We submit, therefore, that the Trustee's suggestions as to re-taxation of costs are without merit.

IV.

The Circuit Court of Appeals Has Lost Jurisdiction of the Causes.

We have answered the Court Trustee's motions to dismiss appeals 7060 and 6986 on the merits. We respectfully suggest, however, that as the Court Trustee's petition for rehearing has been denied this court has lost jurisdiction of the causes and is therefore without jurisdiction in this proceeding to entertain the Court Trustee's motion.

Respectfully submitted,

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
Attorneys for Appellants-Respondents.

Endorsed: Filed June 27, 1940. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the third day of July, 1940, the following further proceedings were had and entered of record, to-wit:

Wednesday, July 3, 1940.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Walter E. Treanor, Circuit Judge.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank and Trust Company of Chicago, etc., *et al.*,
Appellants,
6986, 7060 *vs.*
Weightstill Woods, etc., *et al.*,
Appellees.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the Court that the motions to dismiss appeals for want of jurisdiction and motion to retax costs filed herein by Weightstill Woods, Court Trustee, be, and the same are hereby, denied.

And afterwards, to-wit: On the fifteenth day of July, 1940, there was filed in the office of the Clerk of this Court, a praecipe for record, which said praecipe is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of Granada Apartments, Inc., a corporation, Debtor.	
Weightstill Woods, Court Trustee, *Appellant.* *vs.* City National Bank and Trust Co. of Chicago, and others, *Appellees.*	No. 7060 and 6986.

To: Kenneth J. Carrick,
Clerk of the United States Circuit Court of Appeals,
1212 Lake Shore Drive, Chicago, Illinois.

Pursuant to applicable rules of the Supreme Court, please prepare and certify the usual printed record, and a sufficient number of printed copies, for review of these appeals on petition for certiorari, to the Supreme Court at Washington at the October term 1940.

Pursuant to Supreme Court rule 38(b), so far as they extend you will please use copies of the printed record, which you prepared for City National, Bondholders Committee and their counsel, and which you filed November 15, 1939 in these appeals.

You may omit motions, suggestions and orders, which pertain only to time for filing of briefs. You will also not print the material mentioned by order of October 4, 1939, the printing of which was excused by that order. Your attention is directed to the fact that the Exhibits to petition for appeal filed June 12, 1939, duplicate the documents printed at pages 111-139, 165-170, 761-793 and 796-813 of the record heretofore printed; and to the fact that some of the documents in the short record which was filed July 19,

1939, in appeal 6986, are a similar duplication. A reference to proper pages will save any need to reprint any duplicate items. Please include and print all other proceedings in these appeals in ~~your~~ court.

You are requested not to print, but to send to Washington as original Exhibits, the four volumes which were certified and approved by the District Court on December 30, 1937, and were sent to this court pursuant to special order by the District Court on June 14, 1939. Your authority for sending these documents as special Exhibits will be found in the order by Circuit Court of Appeals dated May 16, 1940; and Rule 10(4) by the Supreme Court.

Weightstill Woods,
Court Trustee.

Received a copy of foregoing Praecipe July fifteenth, A. D., 1940.

Defrees, Buckingham, Jones & Hoffman,
By Vincent O'Brien.

Endorsed: Filed July 15, 1940. Kenneth J. Carrick, Clerk.

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UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 841 to 1035, inclusive, contain a true copy of the proceedings had and papers filed, made in accordance with the praecipe filed on the fifteenth day of July, 1940, in the following entitled causes:

Causes Nos. 6986, 7060.

In the Matter of Granada Apartments, Inc., Debtor.

City National Bank and Trust Company of Chicago, etc., *et al.*,

Appellants,

vs.

Weightstill Woods, Court Trustee, *et al.*,

Appellees,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 23rd day of July, A. D. 1940.

Kenneth J. Carrick,

(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

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SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 281

ORDER ALLOWING CERTIORARI—Filed October 14, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 282

ORDER ALLOWING CERTIORARI—Filed October 14, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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FILE COPY

Office - Supreme Court, U. S.
FILED
JUL 23 1940
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. 281-282

IN THE MATTER OF GRANADA APARTMENTS, INC.,
DEBTOR.

WEIGHTSTILL WOODS, COURT TRUSTEE,
Petitioner,

vs.

CITY NATIONAL BANK AND TRUST CO. OF CHICAGO, AND OTHERS,
Respondents.

PETITION FOR WRITS OF CERTIORARI.
APPENDICES, Pages 59-70.
SUPPORTING BRIEF, Pages 71-75.

WEIGHTSTILL WOODS,
77 West Washington Street,
Chicago, Illinois,
Attorney for Petitioner.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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SUBJECT INDEX.

	PAGE
Petition for writs of Certiorari	1
Statement as to Jurisdiction	3
Summary of the Matter Involved:	
In the District Court	5
Before Circuit Court of Appeals	10
Surprise Issues and the Denial of Due Process	11
First Salient Omission by the Circuit Court of Appeals	15
Petition by Committee in District Court, Restates and Admits Most of the Charges Made Herein	20
Second Salient Omission by the Circuit Court of Appeals	21
Third Salient Omission by the Circuit Court of Appeals	26
Fourth Salient Omission by the Circuit Court of Appeals	32
The Five Principal Questions Presented	36 to 50
Reasons Relied Upon for Allowance of the Writ	52
In Conclusion	55
Prayer for Relief	58
Appendix "A" (Litigation Chart)	59
Appendix "B" (Former Fiduciaries)	60
Appendix "C" (Apartment Hotel Corporations)	62
Appendix "D" (Findings Not Assigned as Error, etc.)	63
Appendix "E" (Chicago Bar and American Bar Association Canons of Professional Ethics)	69
The "Chandler Act" policy against conflicting interests	70
Supporting Brief	71 to 75

Statutes Cited.

Bankruptcy Act as amended:
Section 2 (21) 25, 30, 74
Section 67 d 3 25
Section 77B 74
Section 249 70
Section 250 ..... 50, 54
Chapter 59, Section 4, Illinois Revised Statutes, 1939.. 74

Rules Cited.

Rule 73 (g) of Rules of Civil Procedure 50, 51, 73
Rule 52 of same 11, 49

Cases Cited.

Alaska Packers v. Pillsbury, 301 U. S. 174..... 73

Adams v. Deem, 296 Ill. App. 571..... 74

Andrews v. Drake, 83 Fed. (2d) 767 at 774..... 72

Bank of America, et al. v. Jorjorian, 303 Ill. App. 184, 24 N. E. 896, 897..... 37

Busby v. First National Bank of Chicago, 288 Ill. App. 500, 520; 6 N. E. (2d) 451, 459..... 74

Butzel v. Webster Apartments Co., 112 Fed. (2d) 362, 364 (C. C. A. 6, 1940).....4, 27, 55, 74

Case v. Los Angeles Lumber Company, 308 U. S. 106.. 13

Chicago Title & Trust Co. v. Schwartz, 339 Ill. 184, 171 N. E. 169 (1930)..... 73

Cities Service Co. v. Dunlap, 308 U. S. 208.....12, 71

In Re Clark's Will, 242 N. Y. S. 210..... 74

Crichfield v. Bermudez Asphalt Paving Co., 174 Ill. 466, 51 N. E. 552, 558..... 45

Dean v. Kirkland, 301 Ill. App. 495, 504..... 13

Dickinson Industrial Site, Inc. v. Cowan, 309 U. S. 382 at 388, 60 S. Ct. 595 at 599.....43, 51, 73

Elieff v. Lincoln National Life Insurance Company, 369 Ill. 408..... 3

In Re Granada Apartments, Inc. 111 Fed. (2d) 834 at 839 (C. C. A. 7, 1940).....3, 74

Green v. Brophy, 110 Fed. (2d) 539, 542..... 3

Harrison v. First Wisconsin Trust Co., 191 Wis. 23; 209 N. W. 945, 947..... 74

Kinney v. Lindgren, 373 Ill. 415, 422..... 74

Lerk v. McCabe, 349 Ill. 348, 182 N. E. 388 (1932)..... 72

Lutcher & Moore Lumber Company v. Knight, 217 U. S. 257, 30 S. Ct. 505 (1910).....46, 71

Mathiesen & Hegler Zinc Co. v. Industrial Commission, 373 Ill. 293 12
Metcalf v. Metcalf, 286 Ill. App. 10, 2 N. E. (2d) 760 (1936) 73
Mittry Bros. Const. Co. v. U. S., 75 Fed. (2d) 79 at 82 72
Morgan v. United States, 298 U. S. 468 (1936) 72
Morgan v. United States, 304 U. S. 1 (1938) 72
National Licorice Company v. Labor Board, 309 U. S. 350 at 362 3
Nonnast v. Northern Trust Co., 374 Ill. ....; affirming 300 Ill. App. 537; 21 N. E. (2d) 796 74
Postal Telegraph Cable Co. v. Newport, 247 U. S. 464 at 475 ..... 12, 71
In Re Prudence Bonds Corporation, 111 Fed. (2d) 37 (1940) 2, 51, 73
Saunders v. Shaw, 244 U. S. 317 (1917) 46, 71
Sherwin Williams Co. v. Watson Industries, 361 Ill. 599 at 605 74
Shulman v. Wilson-Sheridan Hotel Company, (86 Fed. (2d) 898) 301 U. S. 172 51
Union Trust Company of Maryland v. Townshend, 101 Fed. (2d) 903 at 914 73
U. S. v. Hayes, 20 Fed. (2d) 873 at 877 72
United States National Bank and Trust Co. v. Sullivan, 69 F. (2d) 412, 415 74
U. S. v. Shapiro, 111 Fed. (2d) 375 8
Weber v. Mick, 131 Ill. 520 ..... 5, 74
West v. Irwin, 54 Fed. 419 (C. C. A. 7) 73
Williams v. Tooke, 108 F. (2d) 758, 759 (C. C. A. 5, 1940) 71

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. .....

IN THE MATTER OF

GRANADA APARTMENTS, INC.,

Debtor.

WEIGHTSTILL WOODS, COURT TRUSTEE,

Petitioner,

vs.

CITY NATIONAL BANK AND TRUST CO. OF CHICAGO, AND OTHERS,

Respondents.

PETITION FOR WRITS OF CERTIORARI TO REVIEW ACTION OF CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT UPON TWO APPEALS TAKEN BY RESPONDENTS FROM THE DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

PETITION FOR WRITS OF CERTIORARI.

To the Honorable Justices of the Supreme Court of the United States:

1. Petitioner Weightstill Woods, as Court Trustee, prays the issuance of writs of certiorari to review the decision, of the United States Circuit Court of Appeals for

the Seventh Circuit rendered March 26, 1940. In two appeals taken by respondents, that decision (a) reversed the findings of fact and the decree of the District Court as entered by that court on May 2, 1939; and sustained the motions of respondents; to (b) consolidate their inconsistent and competing appeals with each other, and also to (c) consolidate them with other appeals then pending, to the extent of making the original transcript of record in one of such appeals the record common to all appeals; and (d) gave directions to the District Court to allow claims for fees and expenses by respondent City National Bank and Trust Company as former indenture trustee, and a legal firm, Defrees, Buckingham, Jones and Hoffman, as its attorneys, and certain persons as a former bondholder's committee, and otherwise.

The Circuit Court of Appeals also denied several motions made by the Court Trustee to dismiss these appeals. These motions were made in September and October 1939, before any record was printed and before briefs were filed. Motions were newly made in June 1940. By the motions, your petitioner contends that jurisdiction to hear either of said appeals is absent in the Circuit Court of Appeals, because statutory steps were not taken by the respondents. These motions to dismiss are discussed below at pages 50-51 and at Point IV on page 73 of the supporting brief. The denial of these motions and the assertion of jurisdiction over these appeals by the Circuit Court of Appeals, is an additional refusal of due process under the Fifth Amendment. This question of jurisdiction over reorganization appeals arising under Section 250, was involved in a recent case before the Second Circuit Court of Appeals. That case (*re Prudence Bonds Corporation,* 111 Fed. (2d) 37) is now pending before Your Honors. Certiorari was granted June 3, 1940; docket No. 69 for October Term, 1940.

STATEMENT AS TO JURISDICTION.

2. The Opinion by the Circuit Court of Appeals was dated March 26, 1940. Petition for rehearing was denied by the Circuit Court of Appeals on May 7, 1940. The Opinion is reported at 111 Fed. (2d) 834. Mandate was stayed pending this review. Timely application for review by this court is made on July 25, 1940. The petition is presented in accordance with Section 240 (a) of the Judicial Code as amended, and Rule 38 of this court as amended.

3. The Bondholders and the Court Trustee, were not made parties to the proceeding in the state court for appointment of City National as Indenture Trustee, and are not bound by any action in the foreclosure proceedings. *Green* v. *Brophy*, 110 Fed. (2d) 539, 542; *Elieff* v. *Lincoln National Life Insurance Company*, 369 Ill. 408; *National Licorice Company* v. *Labor Board*, 309 U. S. 350 at 362.

4. The jurisdiction of the District Court over the subject matter is based upon Sections 2 (21), 70 e 3, and 642 of the Bankruptcy Act as amended. The jurisdiction over respondents personally is based upon voluntary application and consent of respondents under Section 23 (b) of said Act. When approving the plan on July 14, 1937, the District Court wrote a special reservation of power in that order as follows:

> "Anything herein contained to the contrary notwithstanding, all expenses of administration in this *or any other court* shall be subject to the approval of this court." (R. 149, PR. 110.)

5. This petition urges that the Circuit Court of Appeals wrongfully denied motions to dismiss these appeals

which are inadequately taken and presented; and said court by its orders in these appeals has overstepped its jurisdiction, has refused to follow the plain language of procedural statutes, has abrogated rules of procedure established by the Supreme Court for the conduct of appeals, has disregarded pleadings and other admission of record, has nullified said provisions of the Bankruptcy Act as amended, has exercised appellate power contrary to statute, and thereby has denied to owners of debtor estate a day in court with due process of law; contrary to the Fifth Amendment to the Constitution of the United States. (See supporting Brief at page 71 below.)

Independently of the constitutional questions herein presented, the Supreme Court of the United States should take jurisdiction on certiorari for the purpose of deciding whether or not this Circuit Court of Appeals (C. C. A. 7) or the Sixth Circuit Court of Appeals, is correct in their conflicting views on the power of a bankruptcy court to review fee awards made by a state foreclosure court. The Seventh Circuit Court of Appeals in this case held that the Federal Court had no such power. (PR. 961-963.) The Sixth Circuit Court of Appeals holds that the Federal Court does have such power.

Butzel v. *Webster Apartments Co.*, 112 Fed. (2d) 362, 364, (C. C. A. 6, 1940).

SUMMARY OF THE MATTER INVOLVED.

In the District Court.

6. Petitioner is the duly appointed Court Trustee in the Federal reorganization proceedings of the Granada Apartments, Inc., an Illinois real estate hotel corporation whose Illinois charter was issued in 1929.[1] The proceedings are pending in the United States District Court at Chicago on both voluntary and involuntary petitions filed in April of 1937. A plan of reorganization was proposed, which was confirmed by the court on July 14, 1937, by appropriate order, from which no appeal was taken.

7. The new corporation, Granada Apartments Hotel Corporation, under an Illinois charter dated October 30, 1937, has been operating the reorganized property outside of court since November 1, 1937, pursuant to a conveyance from the Court Trustee, as ordered by the District Court on October 22, 1937. The present matter in litigation was excepted from that conveyance and remains vested in the Court Trustee, pursuant to an order of District Court directing the Court Trustee to carry it to a conclusion.

8. For ten years prior to the filing of the reorganization petitions in the District Court, the Granada property had been in court because of financial difficulties. These difficulties are evidenced by various litigations (see Appendix "A") with consequent expense and delay in meeting creditors demands. Such delay is fraud. The law of Illinois so provides (*Weber* v. *Mick*, 131 Ill. 520). The District Court found that such litigations were started for the purpose of delaying, embarrassing and harassing

1. Record 411, Printed Record 776.

creditors of the Granada estate,[2] and did hinder, defraud and delay such creditors.[3] The findings by the District Court show the detail history of those prior litigations.

9. Respondent City National Bank and Trust Company of Chicago was not named in the Granada bonds indentures. But it voluntarily sought to be and had been appointed successor trustee of the Granada property in foreclosure proceedings in the state court. It remained in possession until the petitioner was given possession on May 17, 1937, by order of the District Court.

10. On June 23, 1937, respondent City National filed in the District Court a proof of claim for services rendered in the state court proceedings,[4] which included a claim for solicitors fees. This proof of claim asserts a state court decree dated December 18, 1936. The Bondholders Committee, which the District Court found to be a mere department of respondent's bank,[5] and not entitled to any payment for services or expenses,[6] filed its claim on September 14, 1937.[7] Objections to both claims were made by the Court Trustee,[8] asserting among other things that said state court by its decree refused to allow the claims of respondents, and that they are without equity.

11. Voluntarily on August 30, 1937, respondent City National Bank and Trust Company of Chicago filed in the reorganization proceedings its report and account as appointed indenture trustee,[9] to which the petitioner, Court Trustee, objected and made counterclaim[10] asking that cer-

2. R. 417, PR. 785.
3. R. 419, PR. 788.
4. R. 103-106, PR. 79-86.
5. R. 415-416, PR. 782-784.
6. R. 424-426, PR. 794-795.
7. R. 108-110, PR. 82-83.
8. R. 112, PR. 84.
9. R. 160, PR. 111-126.
10. R. 175-183, PR. 127-139.

tain items be surcharged. This counterclaim and objections urged (a) that respondent City National and its counsel had served conflicting and adverse interests in the state foreclosure proceedings,[11] and that they were not entitled to fees; the District Court after hearing evidence so found.[12] (b) That respondent City National had committed waste upon the Granada property,[13] and the District Court after hearing the evidence so found.[14] (c) That damages treble the amount of such waste should be assessed against respondent,[15] and the District Court so found.[16] (d) That respondent City National was a voluntary trustee *de son tort*, was liable for its acts, but had no equity to claim payment for services,[17] and the District Court so found.[18] (e) That respondent City National failed to require a full accounting from its predecessor trustees for which failure it should be surcharged[19] and held responsible for, and the District Court found that there had been numerous instances when the questionable dealings of prior fiduciaries (for a list of these "fiduciaries" see Appendix "B") should have been examined and accounted for,[20] and that (f) respondent City National itself and its attorneys (who had handled the Granada affairs for many years) knew of these transgressions of the law by these prior parties, but demanded no accounting and in some instances even aided and abetted the completion of illegal schemes and transactions commenced by prior fiduciaries, and that respondent should be held ac-

11. R. 175, PR. 127.
12. R. 418-420, PR. 787-788; R. 413, PR. 779; R. 414, PR. 781.
13. R. 176, PR. 128-129.
14. R. 419-420, PR. 789-790.
15. R. 176-177, PR. 129-130.
16. R. 419, PR. 789, Par. 54.
17. R. 177, PR. 130.
18. R. 419, PR. 789; R. 421, PR. 791.
19. R. 178, PR. 132.
20. R. 408-415, PR. 772-782.

countable for losses to debtor estate arising from such acts and failures to act.[21]

12. More particularly the objections and counterclaim of the petitioner stated that respondent and its counsel had wrongfully refused and failed to turn over certain Granada cash funds ($1,990.86) pursuant to court order of May 17, 1937,[22] and the District Court so found.[23] This is not only a civil wrong, but a criminal act forbidden by Section 29 of the Bankruptcy Act. (*U. S.* v. *Shapiro,* 111 Fed. (2d) 375.) It was further charged that respondent in 1936 without authority had used Granada funds in the amount of $10,186, to pay court costs, fees and legal expenses never earned,[24] and the court so found.[25] That respondent as trustee in possession prior to May 1937, had overcharged for management fees[26] and the District Court so found.[27] That the costs of the present proceedings should be assessed against respondent and the court so found.[28] That respondent wilfully refused to pay certain current expense bills which it had incurred, due and owing from respondent to creditors, which bills necessarily had to be paid by petitioner to obtain continuance of utility and other services at Granada hotel,[29] and the court so found.[30] That by reason of collusive conduct in breach of fiduciary duties respondent City National Bank and Trust

21. R. 414, PR. 781, Par. 36; R. 412, PR. 778, Par. 26; R. 413, PR. 779, Par. 28; R. 418, PR. 787, Par. 48; R. 409, PR. 773, Par. 14; R. 409, Pr. 774, Par. 16; R. 410, PR. 775, Par. 20; R. 411, PR. 776-77, Par. 23; R. 411-412, PR. 777-778, Par. 24-25; R. 413-414, PR. 780, Par. 32; R. 414, PR. 781, Par. 35; R. 415, PR. 782, Par. 37; R. 417, PR. 785, Par. 44; R. 419, PR. 788, Par. 50-51; R. 419, PR. 789, Par. 54; R. 420, PR. 789, Item 4.

22. R. 179, PR. 133-134.

23. R. 420, PR. 789, Item 3.

24. R. 179, PR. 134.

25. R. 420, PR. 789, Item 6.

26. R. 180, PR. 134-135

27. R. 420, PR. 789, Item 5.

28. R. 419-420, PR. 789, Par. 54 and Item 1.

29. R. 181, PR. 136-137.

30. R. 419, PR. 789, Par. 54.

Company failed to charge Arlington, Inc., (a nearby hotel of which respondent City National was also trustee (see Appendix "C")); either the contract or fair and reasonable rate for heat, water and refrigeration services furnished by Granada, to the damage of the debtor estate in the sum of over $19,000 for which damages the respondent's account should be surcharged,[31] and the District Court so found.[32] That respondent as trustee of both Granada and Arlington by further breach of fiduciary duty and damage to Granada, paid valet commissions to Arlington, Inc., which commissions were earned by Granada rental space prior to May of 1937,[33] and the District Court so found.[34] That respondent by its neglect and in breach of its duty as trustee failed to make any effort to rent vacant space on lobby floor in the Granada property to the waste and damage of the debtor estate,[35] and the District Court so found.[36] Other breaches of trust conduct were also charged and found by the trial court.[37]

13. On September 14, 1937, the Granada "Committee" filed in the District Court its claim for fees and expenses.[38] The claim was for $2,285.21. On the same date there was filed in the same court the "Petition of Defrees, Buckingham, Jones & Hoffman, for allowance of counsel fees."[39] This claim was separate from City National petitions for counsel fees; and expressly limited itself to the alleged work done for the "committee". These claims and proofs of claim were later disallowed by the District Court.

31. R. 181-182, PR. 137.
32. R. 419-420, PR. 789, Par. 54 and Item 8 of R. 420, PR. 790.
33. R. 182, PR. 138.
34. R. 420, PR. 790, Item 7.
35. R. 182, PR. 138.
36. R. 420, PR. 790, Item 9.
37. R. 420, PR. 789-790, Items 2, 4, 10.
38. R. 217, PR. 156.
39. R. 209, PR. 151.

14. The District Court ruled thus *against respondents:*

"By the decree December 18, 1936, the presiding Judge of the Superior Court refused to allow or consider any accounting of the funds." (Finding 30.)[40]

"The court finds that the claim No. 9 and all petitions by City National Bank and by the Bondholders Committee and its counsel for allowances shall all be denied, disallowed and dismissed for want of equity * * *." (Finding 58.)[41]

"That all petitions and claims for expenses and allowances by said City National, Bondholders Committee, and their attorneys and counsel, be now wholly disallowed and dismissed for want of equity." (Paragraph 2 of decree.)[42]

BEFORE CIRCUIT COURT OF APPEALS.

15. Respondents filed in District Court a notice of appeal June 1, 1939; and also filed on June 12, 1939, a petition in the office of the Clerk of the Court of Appeals seeking an appeal by leave. These separate appeals were docketed as No. 7060 and No. 6986. Over objections by the Court Trustee, these two appeals later were consolidated by order October 4, 1939, in the Seventh Circuit Court of Appeals. The appeals so taken by respondent City National Bank and Trust Company of Chicago, its attorneys and Committee, were taken from some findings of fact by the District Court, which findings were adverse to and against the respondents, and also from that part of the decree of the District Court which denied fees as trustee to City National and fees for its counsel, Defrees, Buckingham, Jones and Hoffman, and denied expense moneys to the "Bondholders Committee."

16. The assignment of errors for City National and associates, attacked only a small part of the findings, (see below at Appendix "D") and attacked *only a few* para-

40. R. 413, PR. 779.
41. R. 421, PR. 791.
42. R. 425, PR. 794-795.

graphs of the decree. The briefs for City National and associates, in the Circuit Court of Appeals argued *only part* of the findings mentioned by the assignment of errors, and argued only portions of the decree that were specified in their assignment of errors. Those findings and parts of the findings which stand uncontested by the "assignment of errors" which respondents filed[43] on June 12, 1939, are listed at Appendix "D". The legal effect of respondent's failure to assign and argue error to these findings, is to admit their accuracy and truth. Petitioner urges that the uncontested findings are sufficient to support the ruling against the respondents made by the District Court; and urges that Rule 52 of federal civil procedure forbids any reversal of any finding made in this record. Despite this record status, the Circuit Court of Appeals ordered the reversal of *all* the findings and the entire decree. Such action is outside the jurisdiction of any court of review.

SURPRISE ISSUES AND THE DENIAL OF DUE PROCESS.

17. This petitioner urged upon the Circuit Court of Appeals, that the pleadings and the findings disclosed in the record from the District Court, show such breaches of trust as to compel the disallowance of fees and expense monies to the respondents City National, the Bondholders' Committee and their counsel, pursuant to the applicable local law of Illinois; and to require affirmance of those rulings by the District Court decree.

18. The theory of respondents was that (1) these breaches of trust did not occur or (2) if they did they were still entitled to fees. Thus were the issues drawn and settled in the District Court. The wrongs by the respondents as claimed by this petitioner, may be briefly outlined as follows:

(a) The representation, by City National, its law-

43. PR. 817-831.

yers and members of its Granada Bondholder's Committee, of Arlington, Inc., a competing hotel, not disclosed to Granada bondholders.

(b) The failure by City National, the Committee and their counsel to demand an accounting from predecessor trustees of Granada, despite the knowledge of City National, the Committee and the attorneys of wrongs committed by these trustees causing losses to Granada bondholders.

(c) The use by City National of its false Granada Bondholders' Committee, to represent to the District Court Judge that certain items (which were not debts against the Granada estate) should be provided for by the plan of reorganization, and ordered to be paid out of the debtor estate.

(d) The failure by City National to seek tenants and uses for the real property over which it asserted trusteeship, and its waste of the property and sundry income.

19. As is pointed out later in this petition, the Circuit Court of Appeals did not proceed upon any theory or issue which had been drawn by the parties to this litigation. It side-stepped the issues of the case. The issues so avoided are shown hereinafter as Salient Omissions. The Circuit Court of Appeals decided the case upon new issues chosen and announced by its Opinion. This was done without having given this petitioner *notice or opportunity to be heard* upon these surprise issues. This Appellate action was a substantial departure from regular and ordinary appellate procedure. Petitioner submits this is a substantial denial of due process of law, guaranteed to debtor estate by the Fifth Amendment to the Constitution of the United States.

Cities Service Co. v. *Dunlap,* 308 U. S. 208.

Mathiesen & Hegler Zinc Co. v. *Industrial Commission,* 373 Ill. 293.

Postal Telegraph Cable Co. v. *Newport,* 247 U. S. 464, at 475.

One of the surprise issues used by the Court of Appeals was that of "conspiracy." The Opinion of the appeal court stated:

> "Thus, we conclude there is no justification for charging City National with these various items, with the exception of what we have said with reference to Item III. In reaching this conclusion, we are not unmindful of the rule which requires us to accept findings of the trial court supported by substantial evidence. Here, however, they are predicated upon a theory of the existence of a conspiracy to which appellants were parties. We are satisfied no such conspiracy was proven."

Obviously conspiracy could not be the substantive basis for a cause of action. Civil conspiracy at most is aggravation of damages. It is never a cause of action. *Dean* v. *Kirkland,* 301 Ill. App. 495, 504. More than this however, "conspiracy" was not pleaded, argued or briefed by any party to the appeal below. It was not an issue in either court. But the Court of Appeals makes the lack of "conspiracy," a determining factor upon which a reversal of the trial court's findings is based. No notice or hearing was given this petitioner upon this surprise issue.

20. The Opinion by the Circuit Court of Appeals also defeats the purposes and the spirit of Your Honor's Opinion in *Case* v. *Los Angeles Lumber Company,* 308 U. S. 106. Your ruling in that case should have controlled *Re Granada.* The Granada Opinion indicates that the Court of Appeals was irritated by some procedure in the District Court. This petitioner submits that such criticism by the Circuit Court of Appeals was misdirected and unfounded on this record.

21. The chief reason for the attitude of the Court of Appeals, seems to be that the trial judge had been thorough in his examination of the facts involved. And that as a result the record was so long, as to impose upon an

Appellate Court. Thus at page two of the Opinion the Court of Appeals said:

> "Since 1928 there have been numerous successor trustees and much litigation. The hearing in the court below, which culminated in the orders complained of, covered all of this period and apparently included a review of the acts and doings of all persons, corporations and attorneys, as well as the various matters of litigation had concerning the property.
>
> "The record is of such volume that we find it difficult to make even a summary of the situation in an Opinion of reasonable length. It is almost as difficult to obtain a clear picture of the involved issues."

Then with thinly veiled sarcasm, the Opinion remarked:

> "As stated, *the investigation, inquiry, or whatever it may be called*, upon the issues thus made, assumed a wide range, including everything which transpired in connection with the debtor property from the time of the first bond issue down to the hearing. Although we are convinced that much of what was heard and considered was irrelevant and immaterial to the issues before the court. It seems important to relate *some* of the more salient matters." (Italics supplied.)

22. True to this warning the Opinion of the Circuit Court of Appeals then proceeded to relate only "*some of the more salient matters*" as pleaded, and proved in the District Court. By the same token, the Opinion omitted other "salient [44] matters" of even far greater importance.

These omissions are discussed below at pages 15 to 32. The Opinion also contains *salient assumptions* by the Court of Appeals. These are discussed under "Principal Questions" at pages 36 to 50. The magnitude of these omissions and commissions is impressive.

"*The investigation, inquiry, or whatever it may be called*", was asked for and largely conducted by respondents. Most of the exhibits and documents prior to 1932 were offered by respondents. The voluntary testimony of their witness Mr. O'Brien covered the entire period. (R. 991-1045; PR. 473-504.) The pleading by respondents demanded a full inquiry. (PR. 111-126.)

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44. Webster defines "salient" as "1. Leaping; bounding; jumping." And it is assumed that the court advisedly used the word in this sense as also does this petitioner.

First Salient Omission by the Circuit Court of Appeals.

23. THE BREACH OF TRUST BY THE SELF-STYLED "GRANADA BONDHOLDERS PROTECTIVE COMMITTEE." The findings by the trial court regarding this so-called committee were thorough and complete. These findings may be summarized as follows:

(a) The Bondholders Committee had no will of its own. It was organized in April, 1933, by and among minor officers, employees and nominees of City National Bank and Trust Company.[45]

(b) The "Corporate Reorganization Division" is a department of City National which organizes bondholder's committees for the purpose of having City National appointed trustee. This department has secured by this manner of operation some 425 corporate reorganizations for City National to be trustee.[46]

(c) The Granada Bondholder's Committee existed solely as a service unit in the City National Trust Department. The committee at all times was controlled and dominated by City National. In the minds of City National witnesses, there was no distinction between the Committee and the Reorganization Division of the City National and these witnesses could not distinguish expenditures by the Committee from expenditures by the City National as Trustee. The same personnel passed upon any matter that came up either to the Committee or the Trust Department.[47]

(d) The same individuals who used their personal names to persuade the public to deposit bonds, were the persons who handled the business for *City National* after it had become depositary or fiduciary in some other capacity.

45. R. 414, PR. 781.
46. R. 415, PR. 782-783.
47. R. 416, PR. 783-784.

(e) The "Granada Bondholder's Committee" petitioned and succeeded in getting its employer, City National, appointed as successor trustee.[48] Thus City National was *"self-appointed"* by its own Committee.[49]

(f) The minutes produced in court do not show any constructive action looking toward reorganization of Granada property ever taken by the Committee.[50]

(g) The adjoining Lincoln Park Manor and Arlington Hotels are also being reorganized. Likewise, there are City National Bondholder's Committees in charge of these properties. Likewise City National was appointed Trustee of Arlington and Lincoln Park Manor.[51] Both of those properties were customers of Granada since 1924, buying heat and water and refrigeration services delivered through pipes from Granada Hotel.

(h) The Bondholder's Committees for Lincoln Park Manor, Arlington and Granada were interlocking, the two top individuals in the Corporate Reorganization Division of the City National Bank and Trust Company were members of all three committees. This constituted a serious breach of trust which disentitles the Granada Committee to any compensation for services to Granada.[52]

(i) There was an adverse financial interest between the Arlington and the Granada properties.[53] The Granada bargained and sold heat, hot and cold water and refrigeration to Arlington.[54] City National officials in 1934 charged off of Granada's books a credit of $4,080 owed to Granada by Arlington.[55] The purpose and effect of this

48. R. 414, PR. 781.
49. R. 417, PR. 786.
50. R. 416, PR. 783.
51. R. 415-416, PR. 783-784.
52. R. 416, PR. 784.
53. R. 418, PR. 787.
54. R. 416, PR. 784.
55. R. 416, PR. 784.

attempted reduction was to enable Arlington to pay off its taxes, and to leave Granada with a tax bill of about $60,000.[56]

(j) These three bondholders committees have been represented throughout by the same attorneys, Defrees, Buckingham, Jones & Hoffman, as also has City National as Trustee of the three properties.[57]

(k) The record does not show that there was ever a disclosure to the bondholders that the Granada Committee was merely a business getting device for City National, or that the Committee employed a firm of attorneys that formerly and currently represented adverse interests, nor does it appear that any bondholder or creditor knew that the City National as Trustee and the Bondholder's Committee and the attorneys occupy similar relationships to the Arlington and Lincoln Park Manor properties.[58]

(l) Continuously since the Committee was organized in 1933, these adverse situations of interest have existed and were fully known to the Committee, City National and counsel, and it was a breach of trust to fail to make full disclosure and to resign from all but one of the relationships. The breach of confidence thus in evidence is so fundamental as to destroy all right for any of these parties to have compensation or reimbursement for their services.[59]

24. These substantial findings by the District Court were set forth in full at pages 9 to 37 of the Court Trustee's brief in appeals 7060 and 6986. At page 9 of the petition for rehearing filed in the Circuit Court of Appeals by the Court Trustee, the following was stated:

"The Opinion overlooks the fact testified to by all

56. R. 417, PR. 784.
57. R. 418, PR. 787.
58. R. 419, PR. 788.
59. R. 419, PR. 788.

of the City National witnesses, that its reorganization division and personnel did all the management work at Granada for Central Republic Trust Company as Trustee, and later for the receiver of that trust company, from the time Central Republic Trust Company began to manage the property. The witnesses for City National admitted that in fact City National had managed the property from the time that Central Trust Company was merged into the Central Republic Trust Company. The transfer from receiver of Central Republic Trust Company to City National was a merely formal act, to recognize the situation that had existed in fact, since the Cody Trust Company went into receivership in December, 1933. In truth the City National was the successor to the management by the Cody Trust Company. At the trial the testimony of both the Cody Trust employees and City National employees, confirms the truth of this paragraph."

25. The wrongdoing by the Reorganization Division of respondent, City National and its alter ego the Granada Bondholder's Committee, began before the time of the formal taking over as Trustee by City National. That fact is admitted by the pleading for Committee. At page 77 of the Court Trustee's brief (Nos. 7060 and 6986) it is shown further that the witnesses of the Committee and of City National by oral testimony fully admitted the charges as confirmed by the findings. The President of the respondent testified before the Judge in District Court[60] that, the Committee *"were officers of my bank."*

26. Petitioner submits that these frauds are so deep that the depositary agreement under which the "committee" received the bonds, in equity is fraudulent and void.

27. The Opinion by the Circuit Court of Appeals passes over these undisputed and damaging facts and findings with a studied nonchalance. By the process of understatement it rewrites the facts and findings so as to exclude

60. R. 764, PR. 336.

some breaches of trust which the District Court discovered from the evidence. The Opinion said:

> "It is true that the committee, organized in 1933, one of whose members was an officer of the City National, had their office and performed their functions in quarters provided by the City National, and employed the services of a division of the City National, whose business was to furnish service to committees representing bondholders. While there may be valid criticism of the relation thus shown, we do not see how that, in itself, could affect the legal duties or obligations of City National, and certainly not prior to the time the latter assumed the duties and responsibilities as trustee."

28. Thus the Circuit Court of Appeals does not mention the central fact which was most obvious that the committee was a mere tool of City National, and that as such in breach of its trust, at all times it was acting for City National and not for the bondholders. That fraud and nondisclosure alone is sufficient to disentitle the Committee, the lawyers and City National to any allowance for fees or expense moneys, from the estate of the bondholders. (See page 74 below.)

DESPITE THE FACT THAT THE COMMITTEE BY SAID PLEADING HAD ADMITTED ITS TRUE STATUS, THIS OMISSION WAS MADE BY THE CIRCUIT COURT OF APPEALS.

On September 14, 1937, the Granada "Committee for the Protection of Holders of First Mortgage Bonds" filed in the District Court its petition for fees and expenses. This petition stated that[61] the "*Committee had incurred certain* expenses and *obligations* for the use of the facilities and *personnel* of City National Bank and Trust Company of Chicago * * *". (Italics ours.)

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61. R. 221, PR. 158-159.

Petition by Committee in District Court, Restates and Admits Many Charges and Findings Made Herein.

> "That during the year 1932 CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO formed a special organization composed of men who were experienced in managing real estate properties (etc.), * * * that the salaries of the men in this organization, together with the rent, light, postage and other incidental(s) expenses incurred in carrying on the work of this organization, were allocated to the various committees. * * *"[62] (Italics ours.)
>
> "* * * that certain of your petitioners were so retained and were so employed, not as members of any committee, BUT AS EMPLOYEES OR OFFICERS DEVOTING THEIR TIME TO THE REORGANIZATION DIVISION OF CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO."[63] (Emphasis ours.)

The petition then recites that this committee "retained City National * * * to render services as Depositary of the Committee in this and in some other instances * * *." Then follows a description of the work done by the "Reorganization Division of City National Bank and Trust Company of Chicago at the instance of your petitioners."[64]

Following the petition is "Exhibit 'A' ",[65] which lists certain expenses incurred by the Committee and totaling $2,285.21. Among other expenses appears the following:

> "Pam & Hurd, Attorneys, for legal services rendered incident to procuring resignation of Central Republic Company as Depositary, and appointment of City National Bank and Trust Company of Chicago as Successor Depositary.
>
> ....$50.00"

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62. R. 222, PR. 159.
63. R. 223, PR. 159.
64. R. 225, PR. 161.
65. R. 229, PR. 164.

The petition is signed by the Committeemen, and then by:

"Defrees, Buckingham, Jones & Hoffman, *Their Attorneys.*"[66]

This petitioner submits that the printed record properly italicizes the words *"Their Attorneys"*. The multiple representation by these attorneys of many adverse interests without disclosure, makes most difficult at times the determination of whose attorneys they really are. This is the next topic for discussion.

Second Salient Omission by the Circuit Court of Appeals.

29. THE BREACH OF TRUST BY CITY NATIONAL AND ITS ATTORNEYS. The findings by the District Court include these:

"Since the Granada property was built in 1924, one set of attorneys have prepared the financial papers and have represented Chicago Trust Company, Cody Trust Company, Thuma, Wendstrand and Hall, as agents and nominees for said companies, and also for Central Republic Trust Company and the Bondholders Committee for Granada property. Throughout ten years of litigation a connected purpose is shown to prevent a clearance of the property from Court entanglements. * * * Every effort has been made to pay with moneys from the debtor estate, court expenses and legal expenses for maintaining and continuing these various litigations, and to protect the bankers who initiated the bond issue and sold the bonds and attorneys from their own wrongs and mistakes."[67]

"City National Exhibit 'X' prepared early in 1924 provided an estimated basis of compensation between Granada Hotel and Arlington Hotel. This document was prepared by Defrees, Buckingham, Jones and Hoffman, attorneys. * * * These attorneys have represented throughout, the Bondholders Committee for Granada, the Arlington and the Lincoln Park

66. R. 227, PR. 163.
67. R. 417, PR. 785.

Manor properties, and likewise the City National as Trustee of these properties."[68]

"Absent a joint operation or a unit reorganization, there was an adverse financial interest between Granada and each of the other properties, because of the services rendered by the Granada property to the other hotels. Neither the attorneys, nor the committees which have an interlocking personnel, nor the City National as Trustee, could rightfully continue a common relationship to all these properties once this adverse interest was disclosed."[69]

"Instead of reorganizing three properties as a unit or resigning from two of the trusts, City National officials at the beginning of 1934 consummated a course of action which had been planned for a year, by charging off a balance of Four Thousand Eighty Dollars ($4,080) that had been regularly billed to Arlington and placed upon the Granada books of account, for the heat, hot and cold water and refrigeration services furnished by Granada during the year 1933. The charge (of which said sum is the unpaid balance) was made pursuant to the Barton contract."[70]

"The purpose and effect of this attempted reduction was to enable the Arlington between 1933 and the present time to pay off entirely its taxes, and to leave the Granada with a tax bill about Sixty Thousand Dollars ($60,000) when these proceedings were begun. At the same time this was done, the former rate of compensation paid by Lincoln Park Manor to Granada was continued and collected without change by respondents and City National as its trustee; and is being paid today by a lessee of that hotel. This deliberate purpose to favor the Arlington, as against Granada by the reduction in charge forcibly made, is an additional breach of trust wholly without any warrant or reason and an intentional derogation from prior operation under the Barton contract with Granada as modified in 1930."[71]

"All these facts were known or available to City National. The records show that the attorneys whom

68. R. 418, PR. 787.
69. R. 418, PR. 787.
70. R. 416, PR. 784.
71. R. 416-417, PR. 784-785.

they now retain, have been active in all of these matters since 1924, and have had to do with most of these litigations. It does not appear that City National or anyone tried at any time to have the Codys or the Cody Trust Company or its officials, or the Chicago Trust Company, or its officials, or any successors or receivers for them, or Wendstrand and the other indemnitors on the court bonds that were released by buying the Pick furniture the second time with bondholders' money, and buying new furniture from La Salle Furniture and Supply Company when Pick & Company took away part of the furniture, to have any of these persons perform their promises and duty to the Granada property and the Granada bondholders."[72]

30. The effect of these findings is (a) that City National and the attorneys were representing adverse interests by breach of trust without disclosing that fact to their beneficiaries, and (b) that the attorneys and City National had knowledge of the fraudulent practices of the prior fiduciaries, but demanded no accounting from such fiduciaries for the reason that the attorneys had been instrumental in effecting the fraud.

31. These were substantial findings. Respondent and the attorneys never denied or justified their current representation of adverse interests. Even in the Circuit Court of Appeals the same attorneys represented (x) City National, (y) Arlington, Inc., (z) the "Committee" for Granada:

32. Respondent and the attorneys never denied or justified the long representation by the attorneys of the prior fiduciaries whose breaches of fiduciary conduct it was the duty of City National as successor trustee to examine and demand an accounting for,

33. The Opinion of the Circuit Court of Appeals avoided these admitted facts. It fails to perform any

72. R. 414-415, PR. 781-782.

of the high duties of the public coroner. The Opinion, unless reversed, will bury without autopsy the record body of these blatant frauds.

34. Nothing in the Opinion even hints that the conduct of the legal firm Defrees, Buckingham, Jones & Hoffman had ever been questioned. This cryptic Opinion states without analysis, that the court could not see how City National could be held for the acts of prior fiduciaries. How indefensible was the conduct of said attorneys is easily confirmed by a reading of the canons of professional ethics, set forth below at Appendix "E". The rank disregard of these canons was called to the attention of the Court of Appeals by this Court Trustee.

35. The Court of Appeals perhaps found the charges made and proven in the trial court so unpleasant, affecting as they did the reputations of a financial organization and law firm, with offices on La Salle Street, Chicago, Illinois, that it omitted all mention of those uncontested charges, despite the fact that they are at the heart of the controversy. The Opinion ignores wholly the principle that *knowledge of the agent is knowledge of the principal.* Defrees, Buckingham, Jones & Hoffman had the knowledge and were agents of City National, their principal. Every questionable act and dealing of prior fiduciaries was well known to the attorneys. City National stands accountable and responsible for that knowledge and for its failure to perform duties and acts of trusteeship, called for by the knowledge, for the benefit of the bondholders and the assembling and protection of the estate; and for liens prior to the first mortgage bonds. It assumed that responsibility in writing.[73]

36. When City National states by its pleading that the tax lien is not collectible against Granada Estate, it admits knowledge that all these liens are debts of Cody

73. R. 2140, PR. 536.

Trust and its successors. (See par. 47 at page 30 below.)

The Bankruptcy Act as amended provides:

> "* * * Courts of bankruptcy are hereby invested * * * with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this Act XX to;
>
> "(21) Require receivers or *trustees appointed in proceedings not under this Act,* assignees for the benefit of creditors, and agents authorized to take possession of or to liquidate a person's property, *to deliver the property in their possession or under their control to the receiver or trustee appointed under this Act * * * and in all such cases to account to the court for the disposition by them of the property of such bankrupt or debtor:* Provided, however, That such delivery and accounting shall not be required, except in proceedings under chapters 10 and 12 of this Act (paragraphs 501 to 676, 801 to 926 of this title), if the receiver or trustee was appointed, the assignment was made, or the agent was authorized more than four months prior to the date of bankruptcy. *Upon such accounting, the court shall reexamine and determine the propriety and reasonableness of all disbursements made out of such property* by such receiver, *trustee,* assignee, or agent, either *to himself or to others, for services and expenses under such* receivership, *trusteeship,* assignment, or agency, *and shall,* unless such disbursements have been approved, upon notice to creditors and other parties in interest, by a court of competent jurisdiction prior to the proceeding under this Act, *surcharge such* receiver, *trustee,* assignee, or agent *the amount of any disbursement determined by the court to have been improper or excessive.* (Section 2.)
>
> "The remedies of the trustee for the avoidance of such transfer or obligation and of such preference shall be cumulative; provided however, that the trustee shall be entitled to only one satisfaction." (Section 67 d 3.)

By this petition the Court Trustee seeks that satisfaction from City National Bank and Trust Company of Chicago.

37. The record and findings show that there was a non-disclosure to the Granada creditors and bondholders

by the self-styled Granada Bondholders' Committee of its conflicting representation of adverse interests. The record and findings also show that City National Bank and Trust Company of Chicago and their attorneys, Defrees, Buckingham, Jones & Hoffman, were guilty of similar non-disclosures to their pretended beneficiaries.

38. This petitioner submits that there has already been too much non-disclosure and that the Opinion by the Circuit Court of Appeals in making these foregoing and the following salient omissions subserves this vicious non-disclosure practice of the respondents. The words of the Opinion consummate and effect a burial of the frauds shown by the record. Against that abuse of judicial power this petition urges supervision by the Supreme Court.

Third Salient Omission by the Circuit Court of Appeals.

39. THE ACCOUNTS OF THE RESPONDENT WERE NEVER APROVED BY THE STATE COURT IN THE FORECLOSURE PROCEEDINGS. The Opinion by the Circuit Court of Appeals relies heavily upon the state court foreclosure proceedings in finding respondent entitled to various fees for itself and counsel, and as an explanation and justification of certain acts of respondent and its counsel. Thus the Opinion states:

> "Item V. This item in the amount of $11,365.42, represents 4% of debtor's gross income charged for management. Of this amount $2512.23 was received by the Central Republic Trust Company during its tenure as trustee, and approved by the *State Court*. Of the amount charged by City National, the sum of $6189.60 was also approved by the *State Court*. The trust deed authorized the retention of reasonable management fees of the trustee and its agents. The *State Court* found the amounts retained to be reasonable *and approved* the same by decree." (Italics supplied.)

At another place in the Opinion the court had said:

> "Item III, in the amount of $1990.86, includes a

number of items, the largest of which is $1608.56. In the proceeding in the Superior Court of Cook County, referred to heretofore, *an accounting was had between City National and the debtor.* By the decree entered in that court, December 18, 1936, the account was adjudicated, and the City National was expressly authorized to apply said sum upon the indebtedness due it. It appears to be the position of the Court Trustee that the order of the Superior Court was void. We conclude to the contrary and, that City National properly applied this amount to its claim *as authorized by that court.*" (Italics supplied.)

This ruling by Seventh Circuit Court of Appeals is in direct conflict with contrary ruling by the Sixth Circuit Court of Appeals, who hold that the Bankruptcy Act and the Bankruptcy Court are paramount over prior state court foreclosure proceedings and allowances.

Butzel v. *Webster Apartments Company,* 112 Fed. (2d) 362 at 364.

40. Thus we see that the Opinion is bottomed upon its assertion, that the decree in the state court foreclosure proceedings bars any inquiry by the District Court or the Court Trustee as to the disposition of the several sums of money involved. One question then is: Do the contents of the decree of the state court justify this reliance which is based upon the theory of *res adjudicata?* The answer must be in the negative. The state court judge expressly stated in the decree, that he did not approve or allow the accounts of City National. In his own hand with ink he had written into that decree apt negative words as follows:[74]

"The court by the entry of this decree does not approve the accounts of the trustee in possession (City National) of the premises involved herein."

41. Thus the decree of the Superior Court of Cook County (December 18, 1936) expressly refused to accept

74. Original record Vol. III, p. 1279, PR. 128.

or confirm any accounting by respondent City National with anyone. This portion of the foreclosure decree wherein the state court rejected the accounting of City National, was set forth *haec verba* by the Court Trustee in his *answer, counterclaim and objections,* filed on September 9, 1937.[75] The District Court found:[76]

> "By the decree December 18, 1936, the presiding Judge of the Superior Court refused to allow or consider any accounting of the funds."

The contrary action by Circuit Courts of Appeals is an arbitrary refusal to examine or to follow the record.

42. Although the result of this litigation must necessarily depend upon the determination of the effect of the words of the state court judge, as placed by him in the decree (if the theory of bankruptcy law used by the Seventh Circuit in their opinion were correct), the debtor estate received no assistance from the Circuit Court of Appeals. That court ignored or overlooked this central portion of the state court's decree as pleaded by the Court Trustee and as found by the trial court. Truly this omission is not only salient but dominant.

43. The Circuit Court of Appeals reversed the findings of the District Court by omnibus order. By that act it avoids the embarrassing task of mentioning or analyzing the refusal of the state court judge to approve City National's accounts. It is plain that the Court of Appeals relied upon its arbitrary statement about the state court decree, in reversing Item III; IV; V; and VI. Each of them is aptly found by the District Court to be due the Court Trustee from City National. The sum of these various items is $44,042.93 plus interest.

44. An additional wrong by City National was the use of its "Bondholder's Committee" to present to the District Court and Granada owners a plan for reorganization

75. R. 175, PR. 128.
76. R. 413, TR. 779.

of Granada, in which without disclosure of the facts it listed as unquestionable debts the balance of $3,000 and interest on a conditional sales contract for furniture; and the balance of $4,000 and interest on a purported Superior Court receiver's certificate. After the plan had been confirmed, investigation made by the Court Trustee, established for the present record and the District Court found, that these items were not Granada obligations, but were Cody Trust and Chicago Trust Company obligations.

45. On these spurious liens City National had been paying out Granada monies from 1933 to 1937 (during which period unpaid state tax liens doubled and no monies were paid to bondholders or stockholders of Granada). The framing of the misleading plan and the failure to make disclosure, were intended to bury this misconduct by City National, and to secure and did secure, approval of the plan without disclosure to or knowledge of these real facts by the Court Trustee or owners. Inasmuch as the City National claim was reserved and continued for further hearing at the time the Granada plan was confirmed by the District Court on July 14, 1937, the liability of City National and associates for such misrepresentation by the plan, continues and remains an issue in this litigation before this court.

46. This is true all the more, because the Circuit Court of Appeals had ruled (104 Fed. (2d) 528) that those liens were recognized and closed by the plan, so that the Court Trustee could not successfully defend against the holders of those liens; namely, the Indemnity Insurance Company of North America, and Continental Illinois National Bank and Trust Company of Chicago. After the Circuit Court of Appeals on the second appeal (111 Fed. (2d) 834 at 843) confirmed order for payment of the claim by Indemnity Insurance Company of North America on its receiver's certificate, it was useless to proceed further to defend against claim by Continental Illinois National Bank and

Trust Company of Chicago, upon the conditional sales furniture contract. That claim had support from similar language which respondents had put into the Granada plan. Whereupon the Court Trustee caused those claims to be settled with cash and satisfied. This additional loss of $10,000 is plainly due to the unfaithful conduct of City National Bank and Trust Company and associates, as accounting trustee now before this court.

47. The fraudulent nature of such concealment and loss is further shown by the fact that City National by its same pleading now before this court, opposed repayment to Cody Trust and its Receiver for the tax lien listed in the plan. Although that tax lien, and the furniture lien, and the receiver certificate lien all arose out of the same situation by which Cody Trust, was seeking to escape from the duty it had assumed in writing to remove all liens. (PR. 120, 536.)

48. By its decree on December 18, 1936, the state court refused to approve any accounting by City National. The District Court heard the accounting in 1937. The District Court found in detail that City National owed these amounts to the Court Trustee. The Circuit Court of Appeals omits mention of the state court's refusal to hear the accounting, and says that the District Court did not have jurisdiction of it. This Court of Appeals reversed the findings of the District Court. The reversal is not only a refusal to read the state court decree. It is also a refusal to give effect to the Bankruptcy Act, which directs the Bankruptcy Court to review administrative allowances in all courts. (Section 2(21).)

49. The state court refused to approve those accounts and said so;[77] the United States District Court disapproved those accounts and said so;[78] and the Circuit

77. Original record Vol. III, page 1279, PR. 128.
78. R. 420, PR. 789, Items 3, 4, 5 and 6.

Court of Appeals then said the state court had approved them and that the District Court had no jurisdiction to disapprove the accounts. We submit that action has no foundation in the record, and is flatly contrary to the Bankruptcy Act. (See pages 27 and 74.)

50. Petitioner submits that the *state court* had a duty to say whether it had or had not approved the accounts The state court did not approve the accounts. The Opinion of the Court of Appeals ignored, overlooked and omitted any mention of the state court's language that it refused approval for the accounts of City National. This ruling of the state court was unquestioned and was admitted by the pleadings now at bar, by respondent City National Bank and Trust Company of Chicago. Its "report and account" filed August 30, 1937 (which was signed and sworn to by the respondent's assistant trust officer) stated to the District Court:[79]

> "* * * your petitioner * * * represents to the court that the chancellor in said foreclosure proceedings in and by said decree expressly indicate(d) that by the entry thereof, he did not purport to approve any account of your petitioner as successor trustee in possession of the said premises * * *."

51. The Circuit Court of Appeals has ignored this admission made by City National by its initial pleading in the District Court, wherein City National submits itself and its accounting for a settlement. This matter having been admitted by respondents by their pleading in the District Court was not in issue before that court, nor before the Circuit Court of Appeals. The heart of the Opinion by the Court of Appeals seeks to decide contrary to this admission by pleading by respondents in the District Court.

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79. R. 162, PR. 115.

Fourth Salient Omission by the Circuit Court of Appeals.

52. ALL FORECLOSURE PROCEEDINGS AND THE DECREE IN THE STATE COURT CLAIMED ONLY A DEBT DUE FROM THE DEFUNCT GRANADA HOTEL CORPORATION (PREDECESSOR OF THE DEBTOR) AND NOT AGAINST GRANADA APARTMENTS, INC., THE DEBTOR. On August 30, 1937, respondent City National filed in the District Court its report and account, as an appointed Indenture Trustee of the Granada property. This report and account[80] sought trustee's fees, fees for counsel in the various proceedings in other courts and expenses for the bondholder's committee. This report and account represented that by reason of the state court foreclosure proceedings, it had a claim against the debtor, *Granada Apartments, Inc.* (PR. 111-126.)

53. On September 9, 1937, the Court Trustee filed his "answer and counterclaim" to the above report. This answer stated[81] as follows:

> "State Court cannot determine an allowance for this court * * * Also said Superior Court decree is void because City National and its counsel there sought to serve conflicting interests and to act in opposite capacities * * * Also said Superior Court decree nowhere says that any sum for any purpose was due to anyone, *from the debtor now at bar.*" (Italics supplied.)

54. A portion of the decree in state court was included as "City National's Exhibit 'N'," in the present record.[82] That exhibit states:[83]

> "15. The court (state court) states the account of the said cross-complainant, City National Bank and Trust Company of Chicago, a corporation, as successor trustee as aforesaid, (for its own use and bene-

80. R. 160-171, PR. 111-126.
81. R. 175, PR. 127-128.
82. R. 1055, PR. 511.
83. R. 1056, PR. 512.

fit) against the said defendant and cross-defendant, Granada *Hotel Corporation,* a corporation, as follows:

"Fees of cross-complainant for services as successor trustee	$ 2,560.00
"Cross-complainant's solicitors fees	9,000.00
"Court Reporter's and stenographer's fees	39.90
"Amount to be paid for additional minutes of title	100.00
	$11,699.90"

(Italics supplied.)

55. The findings by the District Court ruled:[84]

"Granada Hotel Corporation (predecessors of the debtor) was dissolved by the Superior Court of Cook County, Illinois, in cause numbered 50985, upon due complaint of the attorney general of Illinois; and decree entered for dissolution May 17, 1930. All parties knew it was defunct more than two (2) years, when for the first time in August, 1933, proceedings to foreclose first trust deed and to issue receiver's certificate were attempted by cross-bill. *All proceedings and the decree of the Superior Court claim only a debt due from said defunct corporation and no one else.*" (Emphasis ours.)

56. Despite this orderly and substantial pleading, and in spite of the above findings of the District Court, the Opinion of the Circuit Court of Appeals assumes that the decree of the Superior Court has language to award certain monies to respondent from *Granada Apartments, Inc.,* the debtor herein, instead of limiting, as the District Court found (which the state court had stated expressly), to a recovery only from the *Granada Hotel Corporation.*

57. The Circuit Court of Appeals does not mention this substantial holding by the Bankruptcy Court, but totally ignores it and says that the decree of the state court found certain monies due for trustee's and solicitor's fees and otherwise. That assumption is false.

84. R. 413, PR. 779.

58. It seems impossible that the Court of Appeals which had said:[85]

> "The findings are of such serious character that we have read and reread them, and searched the record with a view of endeavoring to ascertain if they find support."

could have *accidentally* overlooked this finding by the District Court, built upon the state court record.

59. Although the result of this controversy must depend primarily upon the determination of whether or not respondent City National, and the committee, had a claim against Granada Apartments, Inc., the debtor, or only a claim against the defunct Granada Hotel Corporation, the Court of Appeals spoke not one word concerning that essential issue, which was decided *against* respondents by the findings of both the state and federal trial courts. Instead of answering this fundamental problem, the appeal court was content to consume many pages of the Opinion with other matter not connected with the designation of the parties to the state court proceedings. It then assumes that the debtor was the party against whom the fees and other items of the foreclosure suit are charged and predicates its argument upon such assumption. A good portion of the Opinion's argument is devoted to the proposition that the state court found this or that amount *due to* City National.

60. The remoteness of this argument is apparent. It is an attempt to cross the bridge long before it is reached. The first thing we must determine is *from whom* such fees are due,—not *to whom*. Obviously no bankruptcy or reorganization court is concerned with any claim unless that claim is against the bankrupt or debtor. That determination should be a matter of first consideration. The District Court did consider and determine this matter adversely to respondent. The Circuit Court of Appeals did

85. Page 4 of the Opinion, PR. 958.

not consider or determine it at all. About this matter the appeal court said nothing. It is truly a salient omission. Despite this omission the Opinion of the Circuit Court of Appeals reversed all findings by the trial court.

The present grievance of this record, has been well stated as public complaint, in an address by Roscoe Pound, Esq., made before the American Bar Association.

> "Under the conditions which obtain in the United States the written opinion filed in the appellate court has two purposes. It serves as the basis of advice to clients and of decision by the courts in other cases according to the common-law technique of decision and doctrine of precedents. This is the function which has always belonged to recorded judicial experience of decision in our system. *But in addition it serves as a check upon the judiciary, under our system of checks and balances, in a polity in which so many legal questions are political and political questions are legal.* For the original purpose there was no need for the endless repetition of formal judicial pronouncements upon the same point nor of labored discussion of every point raised by counsel, whether or not they involve new questions or new applications of old ones. Even less is there call for elaborate discussions of questions of fact. *But for the other purpose it is generally felt to be important* that the reasons of every judicial decision in our highest courts be set forth fully in written opinions, accessible to the profession and to the public, and *that the courts should pronounce definitely upon every point raised by counsel. Here is a subject on which courts* and judicial councils *should be at work in the near future, if our common-law technique is not to break down.*" (Italics ours.)
>
> (From "The Judicial Office today" by Roscoe Pound, XXV American Bar Association Journal, September, 1939, page 731 at 733.)

THE PRINCIPAL QUESTIONS PRESENTED.

A. WHEN A "BONDHOLDER'S COMMITTEE" IN VIOLATION OF ITS FIDUCIARY RELATION TO THE BONDHOLDERS, HAS REPRESENTED ADVERSE INTERESTS WITHOUT DISCLOSING SUCH FACT, DOES THE LAW PERMIT FEES AND EXPENSES TO BE ALLOWED TO SUCH A COMMITTEE IN A FEDERAL REORGANIZATION PROCEEDING?

61. The Opinion of the Circuit Court now under review, gives directions to the District Court to allow fees and expenses to the Committee, City National and their attorneys as follows:

> "* * * We have examined the claims submitted by City National and the committee for what is designated as out-of-pocket expenses, and we see no reason why those claims should not be allowed in full. As to all other claims for compensation and fees, for services rendered in connection with the reorganization proceeding, the amounts mentioned by the court are inadequate, and the court should determine and fix what is the reasonable and customary charge for services thus rendered.
>
> "These appeals are reversed with directions that the court proceed in accordance with the views expressed, costs to be taxed to the court trustee."

62. Petitioner lays aside for the moment the *amounts* of fees to which any of the respondents make claim. This petitioner challenges the *right* of the committee and the other respondents to *any* fees. At page 21 of the depositary agreement the committee agrees to serve without compensation. As pointed out at the "First Salient Omission" in this petition, the committee was guilty also of many serious breaches of trust. The fact of the dual representation of adverse interests was not denied by the committee. Under the circumstances here present, it seems to your

petitioner that the allowance of any fees or expense money to the faithless committee would be unconscionable.

63. Petitioner submits that by making the "First Salient Omission" the Circuit Court of Appeals showed, that it did not consider fundamental basic facts which would of themselves disentitle the committee to any fees or expense money. Thereby the Circuit Court of Appeals committed error in directing the trial court on remandment to allow fees and expense money to the committee. Such a holding by the Circuit Court of Appeals can result only in the breakdown of all law regarding fiduciary relationships.

64. Petitioner also urges that the farthest reach of the decree in the state court allows to respondents a recovery against only the Granada *Hotel Corporation*, and not a fee or expense allowance against the debtor, Granada Apartments, Inc. This is set forth under the title of "Fourth Salient Omission" at pages 32-35 of this petition. The legal effect is *res judicata* against respondents and in favor of the Debtor Estate. *Bank of America, et al.* v. *Jorjorian*, 303 Ill. App. 184, 24 N. E. 896, 897. (Page 75 below.)

65. The petitioner believes that a determination of these questions is most important since there now are and for a long time past have been operating in this City of Chicago, many so-called "Bondholders Protective Committees" which like this committee are only adjuncts or departments of various banks and trust companies, and that the personnel of such committees are not interested in protecting the bondholders (as the misleading committee name suggests), but in arranging for their employer (Trust Company and law firms) to get fees as trustee or otherwise, and to hide the wrongdoings of prior fiduciaries.[86]

86. The Report of the Joint Legislative Committee to Investigate Bondholders Committees, Stockholders' Committees, Creditors' Committees, Certificate Holders' Committees, Corporations, Trustees and Fiduciaries shows that these practices are also rampant in New York. State of New York, Legislative Document (1936) No. 66, pages 24, 25. A discussion of the work of this Legislative Committee is to be found at page 172-3 of the book "False Security" (The Betrayal of the American Investor) by Bernard J. Reis, Equinox Cooperative Press, Inc., New York, 1937.

66. Armed with bonds which trusting bondholders have deposited, the "committees" seldom do more than petition the court (as was done in this case) for the appointment of their employer as trustee or receiver. Obviously such committees do not tell the bondholders of the mismanagement of the bondholder's property by such employers. The committee's only allegiance is to the self-appointed trustee. This is confirmed by the fact that the attorneys for the committee and the attorneys for the trustee are the same. All of these breaches of trust have been proven against this Granada Bondholders Protective Committee. And yet the Circuit Court of Appeals directs the trial court to allow such a committee fees and expense monies. Your petitioner submits that this "reshearing of a shorn lamb" by such a faithless committee should not have the approval of any court.

B. AS MATTER OF LAW, ARE A TRUSTEE AND ITS ATTORNEYS (ALL OF WHOM HAVE COMMITTED BREACHES OF TRUST AND HAVE REPRESENTED ADVERSE INTERESTS WITHOUT DISCLOSURE) ENTITLED TO FEES IN A FEDERAL REORGANIZATION PROCEEDING?

67. The Opinion of the Circuit Court of Appeals, dealt with the question of fees for the attorneys and the trustee, in the same manner that it disposed of the question of fees for the volunteer "Granada Bondholders' Committee." It directs the trial court to allow reasonable fees to the City National as Trustee, and to Defrees, Buckingham, Jones & Hoffman, as counsel for the trustee and the committee.

68. As was pointed out in this petition ("Second Salient Omission" at page 23), the City National Bank and Trust Company of Chicago, represented as trustee and

otherwise adverse interests without disclosing such fact. These adverse interests were:

(a) City National was trustee of Granada.
(b) City National was trustee of Arlington.
(c) City National was trustee of Lincoln Park Manor.

As trustee of the last two named hotels, it contracted with itself as trustee of Granada for refrigeration, heat and water services to be supplied by Granada to Arlington, and Lincoln Park Manor. The fact of these three trusteeships was established at trial and is not here denied by City National. No showing was made by City National that it had ever disclosed to the bondholders or creditors of Granada, that it was acting as trustee of the other adjoining hotel properties.

69. Under these circumstances (mention of which was wholly omitted by the Opinion of the Circuit Court of Appeals) this petitioner urges that the City National by such duplicity has disentitled itself to any fees whatsoever. It is also to be noted that the City National was the moving force which created and controlled the so-called Bondholders Protective Committee, and as such was wholly responsible for the breaches of trust committed by such committee. Please refer to page 18 above.

70. Under the title of the "Second Salient Omission" (at page 23) we have dealt with the breaches of trust by the legal firm of Defrees, Buckingham, Jones and Hoffman. The uncontested facts show that this firm has handled most of Granada's affairs since 1924, and continuously has had full knowledge of same. The revealing testimony of a member of that firm covers a liberal share of this record, shows that his firm was not careful to avoid representing conflicting and adverse interest. Since 1924 in

Granada matters, this firm has represented the following people and trust companies:

(1) The Chicago Trust Company: Indenture Trustee.[87]

(2) The Cody Trust Company: Financial Agent.[88]

(3) Mr. Thuma: Foreclosing Second Mortgage.[89]

(4) Mr. Wenstrand, Nominee for Cody.[90]

(5) Mr. Hall, Agent for Cody.[91]

(6) The Central Republic Trust Company: Indenture Trustee.[92]

(7) The Granada Bondholders' Protective Committee.[93]

(8) The Arlington Bondholders Protective Committee.[94]

(9) The Lincoln Park Manor Bondholders Committee.[95]

(10) City National, as trustee of Granada.[96]

(11) City National, as trustee of Arlington.[97]

(12) City National, as trustee of Lincoln Park Manor.[98]

In many courts, this firm represented the adverse interests of (a) City National, (b) Arlington, Inc., (c) the "Committee" for Granada.

71. At least two of these "trust companies"[99] who were clients of this firm have become insolvent and gone

87. R. 417, PR. 785.
88. R. 417, PR. 785.
89. R. 417, PR. 785.
90. R. 417, PR. 785.
91. R. 417, PR. 785.
92. R. 417, PR. 785.
93. R. 418, PR. 787.
94. R. 418, PR. 787.
95. R. 418, PR. 787.
96. R. 418, PR. 787.
97. R. 418, PR. 787.
98. R. 418, PR. 787.
99. Cody Trust Company and Central Republic Trust Company.

out of business, but when that happened these professional reorganizers installed the succeeding trust company from where they left off with the old. It is a question whether these lawyers are working for the trust companies or the trust companies for them. The trial court, after a month of hearings, found that *neither* the lawyers *nor* the trust companies were working for the bondholders.[100]

72. Litigation against colleagues at the bar is not a pleasant task. Your petitioner, as Court Trustee, would prefer another course, had it been consistent with his duties as an officer of the court, defending this debtor estate. This petitioner might have avoided personal reference, had this law firm not claimed certain fees for pretended services to the Granada estate, disallowed as against debtor, by the state court judge after hearing the foreclosure proceedings. (See pages 30-35 above.)

73. The fact that this law firm in spite of its career in Granada litigation matters was not ashamed here to ask for fees, and is not ashamed to appeal in face of the canons of ethics and the findings of the District Court, conclusively shows how open and widespread are the breaches of trust that take place in receivership and reorganization matters in the City of Chicago. Your petitioner challenges all tendency among men of affairs in Chicago to condone such transactions and transgressions as are here portrayed, especially when done by large firms possessed of power and wealth. (See pages 69-70 below.)

74. Such conduct should not be protected by this court. It should be stopped by this court. The Congress of the United States amended the Bankruptcy Act for the avowed purpose of putting a stop to the scandalous and dishonest conduct of professional reorganizers, Indenture trustees and their equally commercial counsel. The Dis-

100. R. 414-415, PR. 781-782.

trict Court in the present case saw fit to apply that act to this proceeding saying:[101]

> "The judge deems that application of Chapter II and Chapter X of bankruptcy amendments approved by the President June 22, 1938, to this litigation is practicable and desirable."

Respondents did not argue otherwise in the Circuit Court of Appeals. That part of decree is not assailable.

75. If a self-appointed trustee and its self-appointed counsel may secretly represent adverse and hostile interests, and be awarded fees in a Federal reorganization proceeding for so doing, then the Chandler Act is a mockery. The canons of professional ethics are bombast. This petitioner submits that the Chandler Act could and should operate to the advantage and for the protection of unorganized and helpless bondholders and other innocent creditors. Any award of fees to counsel and other fiduciaries who have repeatedly violated the trust reposed in them, is a denial of the spirit and the letter of the Chandler Act, the Canons of Professional Ethics, and any other law designed to enforce common honesty and fair play.

76. It is not only the Court Trustee who urges the need of an authoritative review upon the question of double dealing by trustees, bondholder's committees and counsel. Chicago and hosts of widely scattered investors and helpless bondholders are speaking by this petition. It is to be noted that the District Court found that City National "trustee" had secured some 425 corporate reorganizations by use of this false bondholder's committee technique,[102] and its reorganization division.

78. The District Court found that no benefits had been conferred upon the Granada estate by the so-called Bondholder's Committee, City National or Counsel,[103] and

101. R. 408, PR. 772.

102. R. 415, PR. 782-783.

103. R. 416, PR. 783; R. 417, PR. 785; R. 414-415, PR. 781-782.

further that the assets of the estate had been depleted by the actions of these persons.[104] The Opinion of the Circuit Court of Appeals did not analyze the matter, and did not state that any valuable services had been performed by these persons and groups. Despite this that Court of Appeals orders the payment of fees to these groups from the monies held for the ravaged bondholders. In this attitude petitioner submits that the Court of Appeals was in manifest error. One outstanding purpose of the Chandler Act is swept away. All safeguards to control fiduciary conduct are swept away.

79. In the case of *Dickinson Industrial Site, Inc.* v. *Cowan*, 309 U. S. 382 at 388, 60 S. Ct. 595 at 599, this court said that:

> "The history of fees in corporate reorganizations contains many sordid chapters. One of the purposes of paragraph 77B was to place those fees under more effective control. * * * Fee claimants are either officers of the court or fiduciaries, such as members of committees, whose claims for allowance from the estate are based only on service rendered to and benefits received by the estate. (Sec. 243, 11 U. S. C. A., par 643.) Allowance or disallowance involves an exercise of sound discretion by the court based on that statutory standard."

80. On March 12, 1940, the firm of Defrees, Buckingham, Jones & Hoffman, wrote a letter to the three Judges of the United States Circuit Court of Appeals, who had heard the oral argument on February 23, 1940. This letter complained about certain designations of counsel contained in a "Chart of Personnel and Litigation mentioned on oral argument February 23, 1940" which was prepared and presented to the court by this petitioner.

81. On March 16, 1940, this petitioner filed with the Clerk of the United States Circuit Court of Appeals the

104. R. 416-417, PR. 784-785.

"Reply by Court Trustee to the letter * * * addressed to the court by the firm of Defrees, Buckingham, Jones & Hoffman * * *." This reply stated that the letter was "an admission of conduct forbidden by Sections 6 and 37 of the American Bar Association Canons of Professional Ethics." These canons were then set forth *haec verba* (See Appendix "E"), they deal with adverse influences and conflicting interests, express consent and full disclosure, and finally with the "confidences of a client." The reply then further stated:

> "This matter of multiple relationship by trustees, committees and counsel, without full and prior disclosure, has been given further discussion since the briefs in this Granada matter were filed, by article in the January 1940 issue of the Illinois Law Review, entitled 'Reorganization The Last Chance.'
>
> "Since this Granada case was argued there appears in the advance sheets *People* v. *Cody Trust Co.*, 301 Ill. App. 580, wherein said law firm is reported as representing the Cody Trust Company. At no time in the trial court or in the Circuit Court of Appeals did this law firm or any of its members disclose their relationship to any one of these six litigations, in which they are publicly reported to have represented the Cody Trust Company.
>
> "It remained for the Court Trustee to search the indexes of the Illinois Court Reports and mention the matter of need for disclosure to your Honors. That full disclosure was the duty of all members of said law firm is very plain in this record.".

The Opinion by the Circuit Court of Appeals does not mention this situation. This same Court of Appeals persuaded Your Honors to overrule all the other circuits and sustain discretionary power over appeals as to fees. Petitioner urges that such power is here used in arbitrary fashion. If this record stands, the District Courts must allow fees as requested in all cases. All the usual controls over fees for fiduciaries will be swept away.

82. Many of the findings of the trial court upon which

these breaches of trust are based were not challenged by being assigned as error by respondents. These findings which are admitted are set forth in Appendix "D" at page 63 of this petition. Petitioner wishes to call Your Honors attention particularly to findings 36, 44, 46, 48, 49 and 57 at pages 66, 67, 68 of said Appendix.

83. EX DOLO MALO NON ORITUR ACTIO. Under the title "First Salient Omission" the true status of the "Granada Bondholder's Protective Committee" has been discussed. This Committee was created by respondent City National Bank and Trust Company of Chicago, for the purpose of having this self-serving creature to petition the state court for the appointment of City National as trustee. The record shows that any authority of the Committee depended upon the deposit of bonds with it by the Granada Bondholders. The record also shows that no disclosure was made by the Committee to these bondholders that the Committee was staffed with City National employees, whose main purpose in creating the Committee was to have their employer, City National appointed trustee of Granada. THIS FAILURE TO DISCLOSE WAS FRAUD UPON THE BONDHOLDERS. Respondent City National gained possession of the Granada property as trustee by fraud. The trial court found that City National was a mere trustee *de son tort* and disallowed its claim for fees. To hold otherwise (as the Circuit Court of Appeals did), is to say that a right of action can arise out of fraud. In *Crichfield* v. *Bermudez Asphalt Paving Co.*, 174 Ill. 466, 51 N. E. 552, 558, Justice Magruder stated thus the applicable local law:

> "* * * the law will not lend its support to a claim founded on its violation."

At Point III on page 72 below, further citations are submitted.

C. MUST A CIRCUIT COURT OF APPEALS FUNCTION ACCORDING TO DUE PROCESS OF LAW AND DECIDE THE CASE ON THE ISSUES RAISED IN THE DISTRICT COURT, OR CAN IT WITHOUT NOTICE OR HEARING IN VIOLATION OF CONSTITUTIONAL LAW REVERSE THE TRIAL COURT'S FINDINGS, WHICH FINDINGS WERE NOT CONTESTED OR ASSIGNED AS ERROR IN EITHER COURT?

84. This petitioner urges that the United States Circuit Court of Appeals for the Seventh Circuit denied him that due process of law, which is guaranteed to Granada owners by the Fifth Amendment to the Constitution of the United States. This petitioner further contends that the "due process of law" to which that amendment refers is not confined to the proceedings and judgment of the trial court. An Appeal Court is not insulated from the Constitution. Due process may be denied by a departure from established procedure equal to a lack of notice and hearing in an appeal court, more violently and completely than it can be denied in a court of trial. This is especially true when the Court of Appeals reverses the trial court. But it is true even for an affirmance.

85. In *Lutcher & Moore Lumber Company* v. *Knight*, 217 U. S. 257, 30 S. Ct. 505 (1910), this court held that when a Circuit Court of Appeals affirmed a judgment of the Court below on a basis not in issue in the court below, without an opportunity to the parties to be heard upon that issue, it denied the Appellants their *"day in court"* or

> "was the equivalent to condemning them without affording them an opportunity to be heard."

86. In *Saunders* v. *Shaw*, 244 U. S. 317 (1917), this court ruled that another appeal court (Louisiana Supreme) deprived a litigant of due process of law, when it reversed the judgment on the basis of a proposition of

fact not in issue in either court without affording the litigant the opportunity to be heard on that fact.

87. In the case at bar the respondents were the Appellants in the Circuit Court of Appeals. As such they prepared a certain assignment of errors which did not contest certain major portions of the findings of the trial court. (See Appendix "D".) Since error was not assigned to certain of these findings and since these uncontested findings did in themselves provide a satisfactory basis for an affirmance of the findings of fact of the trial court, this petitioner (Appellee therein) had no reason to cite record evidence to sustain these findings.

88. The briefs of both parties did not discuss the evidence in support of or at war with these findings to which no error was assigned. It was understood by the parties that only those matters should be discussed in the Court of Appeals to which error was assigned, and that the respondents were limited in the number of their appealable points to that assignment of errors. The Circuit Court of Appeals did not so understand this basic and fundamental proposition of orderly procedure in conformance with due process of law. It acted to the contrary.

89. The Circuit Court of Appeals reversed ALL findings of fact of the trial court including those which had been admitted by the failure of respondents to assign as error. The effect of this was that *the Circuit Court of Appeals wrote new findings of fact* on questions not raised in that court.

90. As a result of the arbitrary refusal of the Court of Appeals to be bound by the pleadings and record that court

(1) created new issues of fact and law of which petitioner had
(2) no notice and therefore could not have
(3) his "day in court" or
(4) a reasonable opportunity to prepare as counsel.

All of these results of the appeal court's acts amount to a substantial denial of full hearing and notice, which are the fundamental requisites of due process of law.

91. But the Circuit Court of Appeals for the Seventh Circuit did not stop there. Not only did it decide the case upon *new issues of fact and law* without notice or opportunity to this petitioner to be heard, but it also refused to consider and did ignore the central issues of fact as established in the trial court. (Salient Omissions.) Thus only by devices of commission and omission did the Court of Appeals find it possible to reverse the trial court. By both devices this petitioner was deprived of property without due process of law.

92. This was a double violation of the Fifth Amendment to the Constitution of the United States of America. The extent to which said court went in this violation, shows conclusively that it believed itself as an appeal court was, unlike a trial court, not forced to operate under the limitations of justice as imposed upon all courts and administrative agencies by the Constitution of the United States.

93. This petitioner performs this unpleasant duty with deep regret, that his duties as Court Trustee impose upon him the necessity to state so fully what was done by the Court of Appeals, in apparent violation of orderly and due process of law, and in disregard of the Constitution of the United States.

94. This is particularly so in view of the fact that the case at bar is not an isolated instance of departure from established law and constitutional procedure by the Circuit Court of Appeals for the Seventh Circuit. Understatement of some matters and the forgetting of important central facts, was the method used in reversing another Granada appeal (104 Fed. (2d) 528) a year ago. Petitioner

submits that the same method was used to reverse and defeat the Prima Case, 88 Fed. (2d) 785.

D. MAY A COURT OF APPEAL REVERSE AND OVERRULE THE FINDINGS OF FACT BY THE TRIAL COURT, CONTRARY TO RULE 52 OF CIVIL PROCEDURE, AND WITHOUT ANALYSIS OF THE EVIDENCE UPON WHICH THOSE FINDINGS WERE MADE?

95. Throughout this petition it has been shown that the Circuit Court of Appeals ignored or overlooked many central and controlling pleadings, documents and other facts upon which the findings of fact of the District Court were based. It was further noted that the Opinion of the Circuit Court of Appeals did not contradict or mention most of the material contained in the court's findings. Despite this the Circuit Court overruled and reversed all findings by the District Court including those which were not denied or contested by respondents, and which were not mentioned by the Opinion of the Circuit Court.

96. Petitioner submits that the Circuit Court of Appeals in holding that:[105]

> "We have concluded those findings were without substantial support * * *"

without having analyzed the evidence upon which the findings were based, but on the contrary having demonstrated by its Opinion that it had boldly overlooked the uncontested record, and overlooked the evidence supporting the very few findings that were argued by respondents, and had overlooked the uncontradicted documentary evidence upon which such overlooked findings were based, was in manifest error and denied petitioner a day in court.

97. The action by the Circuit Court of Appeals was

105. PR. 953.

contrary to Rule 52 of the Rules of Civil Procedure (28 U. S. C. A. following Section 723 c) which in part states:

> "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

This is the old law rule now applied to all civil cases, and is the rule the Supreme Court has so firmly applied in many cases on review of findings by administrative bodies.

E. HAS A CIRCUIT COURT OF APPEALS JURISDICTION OF AN APPEAL TAKEN IN VIOLATION OF SECTION 250 OF THE CHANDLER ACT AND PRESENTED WITHOUT A RECORD HAVING BEEN FILED AS PRESCRIBED BY RULE 73 (G) OF THE FEDERAL RULES OF CIVIL PROCEDURE?

98. The motion to dismiss, renewed by petitioner on June 22, 1940,[106] state that appeal 7060 was taken by filing a notice of appeal in the District Court on June 1, 1939, and that appeal 6986 was based upon a petition for leave to appeal filed in the Circuit Court of Appeals on June 12, 1939. Both appeals, dealing with same subject matter and claim, were taken from the decree of the District Court dated May 2, 1939. The motion contended:

(a) That the two appeals competed with each other and as such the second appeal (6986) should be dismissed.

(b) That the only transcript of record as filed was filed with appeal 7060. No record was filed for appeal 6986 to comply with the rules.

(c) That in violation of Rule 73 (g) of the Federal Rules of Civil Procedure—Appellants (respondents) did not file their record within 40 days, and did not ask for an extension of time for so filing the record until the 48th day, and that since the time for filing the record had expired, the Court of Appeals

106. PR. 1007 and page 2 this petition.

had no jurisdiction or power to grant such an extension,—appellants already being in default at the time of their motion.

(d) That the Court of Appeals allowed the motion to enlarge the time for filing the record and that this order violated Rule 73 (g) of the Rules of Civil Procedure, which provided that the District Court and not the Court of Appeals had the power to grant such an enlargement of time.

(e) That as a result of the failure of appellants to comply with rules, appeal 6986 was left without a supporting record.

(f) That since the Court of Appeals had lost jurisdiction of 6986 on July 11, 1939, by failure of appellants to file the record, all subsequent orders by the Court of Appeals, including the order of consolidation were void.

(g) That since under the decisions of *Dickinson Site* v. *Cowan*, 309 U. S. 382, (104 Fed. (2d) 771 in this Court of Appeals) and *Shulman* v. *Wilson-Sheridan Hotel Company*, (86 Fed. (2d) 898), 301 U. S. 172, Appeal 7060 had failed for want of jurisdiction as not being properly taken (by leave instead of by right), all subsequent orders relating to 7060 were void, including the order of consolidation.

(h) That these appeals should both be dismissed for lack of jurisdiction. *In re Prudence Bonds Corporation*, 111 Fed. (2d) 37, (1940).

The Circuit Court of Appeals on July 3, 1940 denied these motions and further motions by the court trustee to retax the costs, pursuant to Section 250 of the Bankruptcy Act as amended.

99. Petitioner submits that the record clearly shows that the Circuit Court of Appeals had no jurisdiction over these appeals at any time after July 11, 1939, and that consequently the denial of each of these motions was error. These errors by the Court of Appeals more clearly will appear at IV of Supporting Brief below, page 73.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

100. By this petition there is shown a denial of due process of law and a violation of the Fifth Amendment in the several ways now summarized as follows:

(a) The Circuit Court of Appeals reversed findings of fact of the District Court which had not been assigned as error nor challenged by the respondents herein. (Appendix "D".)

(b) The Circuit Court of Appeals refused to decide these appeals upon the issues of fact and law as established by pleadings and proofs in the trial court, and by the assignment of errors and briefs in the Court of Appeals. (Salient Omissions, Appendix "D" and Principal Questions Presented, C.)

(c) The Circuit Court of Appeals deprived this petitioner of property without prior notice or hearing when it reversed all findings of the trial court on the basis of new law and facts not in issue in either court. (Principal Questions Presented, C, and Supporting Brief I, II (a) and (b).)

(d) The Circuit Court of Appeals in violation of Rule 52 of the Rules of Civil Procedure reversed and overruled the substantial findings of fact of the District Court, without analysis of evidence upon which those findings were based. (Salient Omissions.) The court discusses fragmentary testimony, counts noses, and seeks to weigh some evidence, contrary to any power possessed by such court of review.

(e) Many of the findings of fact made by the District Court upon hearing in open court without a reference, which are ignored, not mentioned or discussed in the Opinion of the Circuit Court of Appeals, are reversed by an omnibus order.

(f) The Circuit Court of Appeals orders expense monies and fees paid to a City National committee which, in violation of its fiduciary duty to the bondholders, had represented adverse and hostile interests without disclosing such facts to the bondholders or creditors. This despite the fact that any allowance of fees would be contrary to the express terms of the depositary agreement which specifies that there shall be no fees for the committee.

(g) The Circuit Court of Appeals orders fees paid to a bondholders committee, which had by pleading admitted that it did not take any constructive action in the reorganization of the debtor estate, but as shown by the record, had committed wrongs and injustices to said estate. (Appendix "D"; page 67, paragraph 40; page 68, paragraph 57.)

(h) The Circuit Court of Appeals orders fees paid to City National as former voluntary trustee, which in violation of its fiduciary duty to the bondholders and the debtor estate, had represented adverse and hostile interests without disclosing such facts to Granada owners.

(i) The Circuit Court of Appeals orders fees and expenses paid to City National as such trustee, who had by pleadings admitted that it had not at any time tried to have the prior fiduciaries perform their promises to the debtor estate or its bondholders had allowed statutes of limitation to run, and had itself committed wrongs and injustices to the debtor estate. (Appendix "D", page 66, paragraph 36; page 68, paragraph 57.)

(j) The Circuit Court of Appeals orders fees paid to a firm of attorneys that had in breach of trust and ethics represented adverse and hostile interests without disclosure and consent, causing loss and detriment to the debtor estate. (Principal Questions Presented B; Supporting Brief III, and Appendix "E", pages 38-45, 69-72.)

(k) The Circuit Court of Appeals orders fees paid to a firm of attorneys, such trustee and such committee, all of whom had by pleading admitted that they had represented the former unfaithful fiduciaries, had tried to thwart and stay earlier Federal Reorganization proceedings, had represented adverse interests, and had committed many wrongs and injustices to the debtor estate. (Appendix "D", page 67, paragraph 44; page 67, paragraph 46; page 67, paragraph 48.)

(l) The Circuit Court of Appeals in violation of Section 250 of the Chandler Act asserted jurisdiction over an appeal for fees, which had been taken as of right by the filing of a notice of appeal in the District Court, and further erred in denying this petitioners motion to dismiss such appeal and to retax costs. (Principal Questions Presented E and Supporting Brief IV, pages 50-51, 73.)

(m) The Circuit Court of Appeals in violation of Section 73 (g) of the Rules of Civil Procedure, and contrary to said Section 250, and without power to enter such an order, allowed respondents motion to grant new time within which to file the record (Principal Questions Presented E, Supporting Brief IV (b)), and then without record being filed, ordered a consolidation with the adverse prior and competing appeal taken as of right by respondents.

(n) After the respondents had been eight days in default in completing appeal, they filed a motion to grant new time within which to file their record, and the Circuit Court of Appeals erred in granting such motion, because by reason of the default the Court of Appeals had lost jurisdiction over the appeal. (Principal Questions Presented E, Supporting Brief IV (a), pages 50-51, 73.)

(o) The Circuit Court of Appeals denied to petitioner an orderly proceeding adapted to the nature of the case. The procedure used by the Court of Appeals was not predictable under the prior rules and applicable statutes,

but was so unreasonable arbitrary and capricious as to accomplish a destruction of the substantive rights of petitioner: Supporting Brief I.

(p) Although the meaning of applicable rules and statutes was expressed in plain language not open to interpretation, the Circuit Court of Appeals makes an adverse and arbitrary application of said rules and statutes, contrary to judicial power and duty. (*New National Coal Company* v. *Industrial Commission,* 373 Ill. 468.)

(q) Aside from constitutional considerations this court should allow the writ because there is A CONFLICT BETWEEN THE SIXTH AND SEVENTH CIRCUIT COURT OF APPEALS ON A SUBSTANTIAL QUESTION OF JURISDICTIONAL LAW, *i. e.,* the jurisdiction and power of a bankruptcy court to review and readjust in a reorganization proceeding awards of fees made by a state court in a prior foreclosure proceeding. In the instant case the Seventh Circuit held[107] that the Federal Bankruptcy Court had *no such power* to disturb the state court award. Recently the Sixth Circuit in *Butzel* v. *Webster Apartments Company,* 112 Fed. (2d) 362, 364 (1940) held that the Federal Court had the power and duty under the Bankruptcy Act, to so review and readjust improvident fee awards of state courts. Certiorari should be granted by this high court for the purpose of settling this conflict between these two important circuits.

IN CONCLUSION.

101. There is a situation at Chicago which needs correction by the Supreme Court. The record discloses that some corporate trustees are untrustworthy. By these and other like minded trustees, foreclosure and reorganization proceedings are made a golden opportunity. Waste, neglect and breach of duty have become a menace to scat-

107. PR. 961-963.

tered investors. "Bondholder Committees" created by would-be corporate trustees are the wedges that procure the appointment of unworthy trustees. Some firms of attorneys cooperate with these unlawful activities.

102. First Indenture Bonds are issued. The proceeds are not used for the purposes stated in the prospectus. Furniture and other items were to be purchased outright and be security; but without disclosure to bond buyers, are purchased upon chattel mortgages. Second Junior Bond issues are floated to keep the unpaid creditors from seizing the property. Commissions, lawyers fees, interest on the chattel mortgages and bond issues accumulate, while the property depreciates. Fake foreclosure proceedings are filed by a nominee of the bankers and trustees. Begun in June 1930, the suit lags for 78 months. Fees and commissions are again paid. Receivership certificates are issued, and new furniture is purchased from furniture company organized as a subsidiary by the bond floaters. Bond issue houses and trust companies collapse under the burden of their duplicity, misrepresentations and mismanagement. New trust companies take over their assets and their lawyers, but seek not to assume their liabilities.

103. Not receiving any income for five years, bondholders and creditors in despair file involuntary reorganization proceedings in the Federal Courts. The proceedings are defeated on a narrow technicality, by the respondents now at bar.[108] A new foundation is laid for bondholder proceedings and new federal proceedings are filed. Then in 1937 the sordid picture is revealed for the first time. The conscience of any court should be aroused by these revelations. In accomplishing these delays and frauds, the respondents now at bar have made use of the process of this Supreme Court, in *Tuttle* v. *Harris,* 297 U. S. 225, and of many other courts, page 59 below.

108. *Tuttle* v. *Harris,* 297 U. S. 225.

104. Professional apologists appear in the guise of "counsel" and tell the District Court that there is nothing wrong, but that even if there is, the City National is not to blame. The sins were committed to former fiduciaries. The court finds that the professional apologist was counsel for both the defunct fiduciaries and the successor City National, and further finds that the City National had a department which had "serviced" the trust in question for the former fiduciaries. The District Court rules that City National is responsible for loss due to its failure to demand an accounting from former fiduciaries.

105. The District Court holds that the lawyers representing for fifteen years adverse and hostile interests without disclosure, breached their trust and professional ethics and disentitled themselves to fees. The ruling of the court is the same as respects the claims for fees and expenses by City National and its "Bondholder Committee," which had been created by City National for the sole purpose of securing the appointment of City National as trustee. The court rules that instead of contributing to the assets of the debtor property, these persons and groups of persons have deleted the assets and scuttled the debtor corporation, its predecessor and the bondholders.

106. The lawyers pretend to be astonished. An appeal by them claims that the ruling by the District Court was prejudiced and unfair. The Court of Appeals reverses the trial court. In its Opinion the court of review by the expedient of omission does not mention that the lawyers continued hovering at the scene of financial failure, nor does it mention their breaches of trust. The bondholders are shorn and reshorn. These lawyers are both midwife and undertaker. They seek to be paid by debtor estate for both services. The record shows no advantage but only great loss to the estate.

107. The representative of those bondholders is now

before this high court with his petition for certiorari. He asks for due process of law and justice to the end that Federal reorganization may deny fees to those who have for years in breach of trust bled this mismanaged bondholder's equity. The Court Trustee submits that the debtor estate did not receive *due process* of law in the United States Circuit Court of Appeals for the Seventh Circuit. The action of that court was such as to call for review and reversal by the Supreme Court of the United States.

PRAYER FOR RELIEF.

108. WHEREFORE, petitioner prays the allowance of a writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit, to the end that the cause herein may be reviewed and decided by this court, and that the decree and orders herein by said Circuit Court of Appeals may be reversed, and for such relief as to this court may seem meet.

WEIGHTSTILL WOODS,
Attorney for Petitioner.

APPENDIX "A".

Litigation Chart.

A Decade of Litigation (1928-1938).

Year	Title	Citation	Nature of Case
1928	*Albert Pick & Co.* v. *Granada Hotel Corp.*	Circuit Ct. of Cook Co.	Foreclosure on chattel mtge. on Granada furniture.
1928	*Wendstrand* v. *Pick & Co.*	U. S. District Court	Complaint for injunction to stop sale of furniture. Denied.
1930	*Wendstrand* v. *Pick & Co.*	88 F. (2d) 25	Appeal to C. C. A. 7th. Affirmed.
1930	*Wendstrand* v. *Pick & Co.*	281 U. S. 768	Petition for Writ of Certiorari denied.
1930	*Pick & Co.* v. *Indemnity Insurance Co. of North America*	U. S. Dist Ct.	Suit on bond in Wendstrand suit. $60,000 damages demanded.
1930	*People* v. *Granada Hotel Corp.*	50985 in Superior Court of Cook Co.	Dissolution of corporation by Atty. General of Illinois.
1930	*Thuma* v. *Granada Apts. Inc.*	519151 in Superior Court of Cook Co.	Partial foreclosure. (1928 2d Mtge. Bonds).
1933	*Appeal of Pick & Company*	269 Ill. App. 484	Determination of whether furniture was part of Real Estate. Held to be personal property.
1935 March	*Tuttle* v. *Harris*	U. S. Dist. Ct. No. 59143	Reorganization proceeding against old Granada Hotel Corp. Dismissed on May, 1937 on mandate from Supreme Court.
1935 April	Second Petition for Reorganization	U. S. District Court	Reorganization against Granada Apts. Inc. Dismissed in May, 1937 by Judge Barnes.
1935	*Tuttle* v. *Harris*	No. 5488 in C.C.A. (7th)	Appeal on question of whether foreclosure receivership was act of bankruptcy. Held: Yes.
1936	*Tuttle* v. *Harris*	297 U. S. 225	Supreme Court held that this was not an act of bankruptcy. Reversed.
1937	*Rosenberg* v. *Granada Apts., Inc.*	Mun. Ct. of Chicago No. 2778211	Suit on Bond delinquency. Judgment entered 3-8-37. No. 4630.
1937	*Rosenberg* v. *Granada Apts., Inc.*	Cir. Ct. Cook Co. No. 37C3704	Suit for Appointment of receiver. (Creditor's Bill.) Receiver appointed 4-14-37.
1937	*In re Granada Apartments, Inc., Debtor.*	U. S. Dist. Ct., Danville, Ill.	Involuntary pet'n for reorganization under 77B proceedings. This was consolidated with next action below.
1937	*In re Granada Apartments, Inc., Debtor.*	U. S. Dist. Ct., Chicago, No. 65811	Voluntary pet'n for reorganization under 77B. (Danville pet'n transferred to Chicago to be heard with this case).

(See voluntary testimony of respondent's witness PR. 473-504.)

APPENDIX "B".

Former Fiduciaries.

CHICAGO TRUST COMPANY	Original "house of issue" of Granada bonds (1924) and co-sponsor with the Cody Trust Company of the (1928) issue. Author of the two prospectuses which represented that furniture was security for bondholders. Trustee under 1924 and 1928 Trust Deeds. Consolidated with Central Trust Company in July of 1931.
CODY TRUST COMPANY	Formed in 1928 by the Codys, Riddle and others as a new house of issue. Co-sponsors with the Chicago Trust Company of a new first mortgage (1928) and second mortgage bond issue. Officers of this company were officers of Granada Apartments, Inc. from 1929 to 1934 and as such controlled all policies. Cody Trust Company has been dissolved.
CHICAGO TITLE & TRUST CO.	Was appointed nominal receiver of Granada under the Thuma partial foreclosure of June, 1930. Order of appointment provided it could not disturb the (Cody) management in control. This disability was later (Jan. 12, 1934) removed. Relinquished receivership to Central Republic March 22, 1934.
CENTRAL TRUST COMPANY	Partner with Chicago Trust Company in the consolidation of July, 1931.
CENTRAL REPUBLIC BANK AND TRUST COMPANY	The name assumed by the consolidated company. It became the successor trustee under the 1928 trust deeds.
CENTRAL REPUBLIC TRUST CO.	The new name assumed by the Central Republic Bank and Trust Company after that organization eliminated its deposit banking business which was taken over by City National Bank and Trust Co., on October 5, 1932. It became the successor to the Successor Trustee.

(See voluntary testimony of respondent's witness PR. 473-504.)

FORMER FIDUCIARIES (*Continued*).

CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO	Former Trustee in the Superior Court foreclosure proceedings, and present Granada Depository and Transfer Agent as appointed by the Federal District Court. Was claimant and counter-claim defendant in the court below where charges of mismanagement and preference by City National, were made by the Court Trustee, and is respondent herein.
THE CORPORATE REORGANIZATION DIVISION	A department at the City National Bank and Trust Company, which was a business getting device for that bank. Officers and employees of this department were members of the Granada Bondholders' Protective Committee. By this department 425 corporate reorganizations have been secured for City National.
GRANADA BONDHOLDERS PROTECTIVE COMMITTEE	Formed by and including officers of the City National Bank and Trust Company of Chicago, who as members of "the Committee" named City National as Trustee in the state court proceedings.

(See voluntary testimony of respondent's witness PR. 473-504.)

APPENDIX "C".

Apartment Hotel Corporations.

GRANADA HOTEL CORPORATION	Predecessor of the debtor. Incorporated by Fred Mateer in 1924. Signer of bond issues. Dissolved by Attorney General in 1930.
GRANADA APARTMENTS, INC.	The debtor herein which filed its petition for 77B proceedings on April 23, 1937. Organized by Cody Trust Co. in 1929 as a hedge against the Pick claim which was not assumed by this new corporation.
GRANADA APARTMENTS HOTEL CORPORATION	Successor of the debtor herein.
THE GRANADA PROPERTY	A hotel-apartment house located at 525 Arlington Place, Chicago, Illinois. The chief possession of three successive Granada corporations, and several receivers and trustees. Furnished in 1924 with $120,000 worth of furniture. Owner of central heating, refrigeration, and water plant for other hotel properties.
ARLINGTON, INC.	The new corporation which owns the hotel-apartment house located at 530 Arlington place, across the street from Granada; former lessee of services from Granada heating and refrigeration plant. Built in 1924 by Mateer. Reorganized in Circuit Court of Cook County.
LINCOLN PARK MANOR HOTEL 500 Fullerton Parkway Corporation	A hotel-apartment house located on Fullerton Avenue across the alley to the rear of Granada, also a Mateer development, former and present lessee of heat, water and refrigeration services from Granada. Built in 1924.

APPENDIX "D".

Findings of Fact by the Trial Court to Which Respondents Did Not Assign Error.

Paragraph of the court's findings	Record	Portion of the Paragraph Admitted
1	R. 406, PR. 769	All of paragraph.
2	R. 406, PR. 769	All of paragraph, except the words "under Chapter II and X of amended law."* [Not argued by respondents.]
3	R. 406, PR. 769	All of paragraph.
4	R. 406, PR. 769-770	All of paragraph, except words "to defend, and is now carrying on this litigation by order of the court."* [Not argued by respondents.]
5	R. 406, PR. 770	All of paragraph.
6	R. 407, PR. 770	All of paragraph.
7	R. 407, PR. 770-771	All of paragraph.
8	R. 407, PR. 771	All of paragraph.
9	R. 407, PR. 771	All of paragraph.
10	R. 408, PR. 771-772	All of paragraph, except words "The Judge deems that application of Chapter II and Chapter X of bankruptcy amendments approved by the President June 22, 1938, to this litigation is practicable and desirable. The decree herein shall so provide."* [Not argued by respondents.]
11	R. 408, PR. 772	All of paragraph including "a copy of the prospectus upon which the Granada bonds were sold is in this record. It specifically states that the furniture and fixtures at Granada are part of the security for the bondholders' money, in addition to the real estate at Arlington Place, consisting of land and hotel building."
12	R. 408, PR. 773	All of paragraph except the words, "Mr. Mateer owned the corporate stock."* [Not argued by respondents.]
13	R. 408-409, PR. 773	All of paragraph.
14	R. 409, PR. 773	"Granada Hotel Corporation, an Illinois Corporation, (not the debtor) was organized and signed the bonds marketed in 1924 by the Chicago Trust Company as a house of issue. * * * Albert Pick & Company of Chicago supplied the furniture on open account and chattel mortgage * * * what became of that much furniture is not shown by the record."

* Although specified as error, this point was not discussed in respondents' briefs in the Circuit Court of Appeals.

Paragraph of the court's findings	Record	Portion of the Paragraph Admitted
15	R. 409, PR. 773-774	None of paragraph.
16	R. 409, PR. 774	"A prospectus was issued by Chicago Trust Company, and a separate one by Cody Trust Company. Both of these documents are in the record; they repeat the announcement made to the bondholders in 1924, that the security includes the furniture and fixtures at Granada Hotel." (This related to the new refinancing in 1928 which was also admitted.)
17	R. 409-410, PR. 774	All of paragraph except words "In the Wenstrand suit in this court bonds were given of $5,000, $20,000 and finally $40,000 to stay the sale."* [Not argued by respondents.]
18	R. 410, PR. 774-775	All of paragraph.
19	R. 410, PR. 775	All of paragraph except words "To protect those who initiated the bond issue and sold the bonds, another employee or nominee of Cody Trust named Thuma, was now used to file on June 10, 1930, a suit for partial foreclosure in the Superior Court of Cook County upon a claim of default upon certain interest coupons of the 1928 second mortgage Granada issue."* [Not argued by respondents.]
20	R. 410, PR. 775-776	The furniture was taken away from Granada and new furniture purchased from a company which not a business firm.
21	R. 410-411, PR. 776	All of paragraph.
22	R. 411, PR. 776	"There was no assumption (by Granada Apartments, Inc.) of furniture indebtedness. This was expressly excluded along with claims of all the general creditors of the Granada Hotel corporation. Having made the 1928 issue in this manner, the bankers used some of it to retire the 1924 issue, but did not pay off the furniture indebtedness."
23	R. 411, PR. 776-777	"This Granada Apartments, Inc., from its beginning was officered by employees of Cody Trust Company, and was wholly under its control."
24	R. 411-412, PR. 777	"Indemnity Insurance Company of North America wished to be released from all those damage claims and suits. * * * Since then Seventy-five Hundred ($7500) Dollars additional has been paid from Granada funds in reduction of the receiver's certificate. * * *"

* Although specified as error, this point was not discussed in respondents' briefs in the Circuit Court of Appeals.

Paragraph of the court's findings	Record	Portion of the Paragraph Admitted
25	R. 412, PR. 777-778	"For said $4,000 face balance and interest, a claim was made in this court against Debtor estate. * * * The Superior Court was not informed about the damage claims and proceedings on the Wendstrand and appeal bonds * * * it was not known (to any court or Granada creditors) that officials of Cody Trust Company and Wendstrand had agreed to purchase the receiver's certificate if it was not paid off out of Granada funds; nor was it known * * * that Wendstrand and others are indemnitors upon all the Wendstrand bonds in this court."
26	R. 413, PR. 778	"* * * that Codys and the Chicago Trust Company both had represented to the bondholders and the public through the mails in 1924 that furniture and personal property at Granada was part of the security; and that Cody Trust Company and Chicago Trust Company had made the same representation again in 1928 in relation to the refinancing * * *;"
27	R. 412, PR. 779	All of paragraph.
28	R. 412-413, PR. 779	"The last interest paid to any bondholders was to pay first mortgage coupons for 1931. * * * None has been paid since."
29	R. 413, PR. 779	"All the litigation prior to August 1933, had affected only the second mortgage trust deed. In that month the cross bill to foreclose the first trust deed was filed; and immediately this receivership certificate was asked for. * * * Decree of foreclosure was not entered until December 18, 1936, which was more than forty months later."
30	R. 413, PR. 779	None of paragraph.
31	R. 413, PR. 779-780	"* * * the main and controlling purpose of I. I. C. N. A. in advancing $11,500 was to save itself from liability in said damage suit, and secure release of same. This was accomplished by a stipulation for dismissal filed in this court, signed not only by Albert Pick & Company, but also by respondent and International & Industrial Securities Corporation, to whom this Granada money was paid."
32	R. 413-414, PR. 780	All of this paragraph except words, "Nominees of Cody Trust Company operated the property until January, 1934."* [Not argued by respondents.] And "At that time school tax warrants owned by Granada needlessly were sold at a discount."

* Although specified as error, this point was not discussed in respondents' briefs in the Circuit Court of Appeals.

Paragraph of the court's findings	Record	Portion of the Paragraph Admitted
33	R. 414, PR. 780-781	"At that time (March 1934) until the Central Republic Trust Company went into receivership near the end of 1934, the City National Bank and Trust Company furnished the personnel and service on the trusts including the Granada matter, as to which the Central Republic Trust Company was nominal trustee." "When Central Republic * * * went into receivership an order was secured * * * on motion of Granada Bondholders Committee to appoint City National * * * as * * * successor trustee. * * * The Bondholders Committee filed a petition requesting that action by the court."
34	R. 414, PR. 781	"It (the Bondholders Committee) had been organized in April 1933, by and among minor officers, employees and nominees of City National Bank and Trust Company."
35	R. 414, PR. 781	"It is admitted by the pleadings and in evidence here that Mr. Hall was so retained to represent and to keep informed the Cody Trust Company and their successors in interest. When the Court took possession of the property, claims were filed upon Granada bonds of the 1928 issue of second mortgage (by) * * * Cody Trust Company."
36	R. 414-415, PR. 781-782	"The records show that the attorneys whom they (City National) now retain, have been active in all these matters since 1924, and have had to do with most of these litigations. It does not appear that City National or anyone tried at any time to have the Codys or the Cody Trust Company or its officials, or the Chicago Trust Company, or its officials, or any successors or receivers for them, or Wendstrand and the other indemnitors on the court bonds that were released by buying the Pick furniture the second time with bondholders' money, and buying new furniture from LaSalle Furniture and Supply Company when Pick & Company took away part of the furniture, to have any of these persons perform their promises and duty to the Granada property and the Granada Bondholders."
37	R. 415, PR. 782	None of paragraph.
38	R. 415, PR. 782-783	"At date of its charter, October 5, 1932, City National took over from Central Republic Bank and Trust Company, and now continues as part of its trust department a personnel organized and called the Corporate Reorganization Division."

Paragraph of the court's findings	Record	Portion of the Paragraph Admitted
39	R. 415-416, PR. 783	All of paragraph including "The Lincoln Park Manor is still in process in that court. For it there is a similar City National Bondholders Committee. City National was trustee for both Arlington and Lincoln Park Manor."
40	R. 416, PR. 783	"The Committee when formed by City National included representation from Cody Trust Company. * * * The minutes produced in this court to show what action was taken by the Granada Committee, do not show that any constructive action was ever taken looking toward a reorganization of the Granada property. The only matter recorded prior to discussion of the present proceedings in this court was refusal to accept an offer of twenty cents per dollar face value for the bonds on deposit with the committee and City National as its depositary."
41	R. 416, PR. 783-784	None of paragraph.
42	R. 416, PR. 784	None of paragraph.
43	R. 417, PR. 784-785	None of paragraph.
44	R. 417, PR. 785	"(one set of attorneys) have prepared the financial papers and (represented) Chicago Trust Company, Thuma, and also * * * Central Republic Trust Company, and City National Bank and Trust Company and the Bondholders Committee for Granada property."
45	R. 417, PR. 785-786	None of paragraph.
46	R. 417-418, PR. 786	* * * "In present reorganization case, City National and said attorneys filed in writing objection and motion to dismiss on May 17, 1937, in an effort to thwart and stay all action by this court."
47	R. 418, PR. 786-787	None of paragraph.
48	R. 418, PR. 787	"City National Exhibit 'X' was prepared by Defrees, Buckingham, Jones and Hoffman, attorneys. They are in this court in this accounting litigation, representing City National, the Granada Bondholders Committee and a separate accounting suit against Arlington, Inc. * * * They filed the Thuma partial foreclosure on the Granada property in 1930. * * * At that time these attorneys withdrew as counsel for Thuma, and immediately appeared on the opposite side of the record as counsel for Chicago Trust Company, then for the Bondholders Committee, and then for City National. These attorneys have represented throughout, the Bondholders Committee for the Granada, the Arlington and the Lincoln Park Manor properties, and likewise the City National as Trustee for these properties."

Paragraph of the court's findings	Record	Portion of the Paragraph Admitted
49	R. 418-419, PR. 787-788	"Neither the attorneys nor the Bondholders Committee, nor the City National presented any plan at any time to the bondholders or anyone else for the joint operation or unit reorganization of the three properties. * * * From that time (May 1929) until now these properties were bondholders equities. No person in a confidential relationship to one of these properties could rightfully represent another."
50	R. 419, PR. 788	None of paragraph.
51	R. 419, PR. 788	"After 1931 no interest was paid to first or second mortgage bondholders: the tax bill unpaid rose from about $30,000 in 1931 to about $60,000 in May 1937."
52	R. 419, PR. 788	None of paragraph.
53	R. 419, PR. 788-789	None of paragraph.
54	R. 419, PR. 789	None of paragraph.
55	R. 419-420, PR. 789-790	None of paragraph.
57	R. 420, PR. 790-791	"The court does not intend to minimize, but does recognize the many wrongs and injustices to the debtor estate shown by this record, which have been committed by City National, by the Bondholders Committee and by their attorneys and counsel; the court finds that all equities are with the Court Trustee; but the court believes that justice to all concerned will be rendered more speedily if the opposing claims and contentions are set off against each other. * * *"
58-72	R. 421-422, PR. 791-793	None of these paragraphs.

[Respondent's Assignment of Errors upon which this Digest is based is to be found at pages 817 to 832 of the Printed Record. The findings of the District Court are at pages 769 to 795 of the printed record.]

APPENDIX "E".

Chicago Bar and American Bar Association Canons of Professional Ethics.

"6. Adverse Influences and Conflicting Interests.

"It is the duty of a lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

"It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interest when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

"The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed."

"37. Confidences of a Client.

"It is the duty of a lawyer to preserve his client's confidences. This duty outlasts the lawyer's employment, and extends as well to his employees; and neither of them should accept employment which involves or may involve the disclosure or use of these confidences, either for the private advantage of the lawyer or his employees or to the disadvantage of the client, without his knowledge and consent, and even though there are other available sources of such information. A lawyer should not continue employment when he discovers that this obligation prevents the performance of his full duty to his former or to his new client."

The "Chandler Act".

By Section 249 of the Chandler Act, Congress enlarges the rule and policy which forbids conflicting interests as follows:

> "No compensation or reimbursement shall be allowed to any committee or attorney, or other person acting in the proceedings in a representative or fiduciary capacity, who at any time after assuming to act in such capacity has purchased or sold such claims or stock, or by whom or for whose account such claims or stock have, without the prior consent or subsequent approval of the judge, been otherwise acquired or transferred."

The callous disregard of these canons and rules of conduct, and the duty in equity to make disclosure to beneficiaries (bondholders) before representing adverse interests, has been repeatedly shown throughout this petition. This indifference to honest dealing is not limited to the respondents. A committee of Congress found that other large law firms at Chicago are commercially minded.[109] The public interest invites the Supreme Court to deal effectively with this situation, through the medium of the present record.

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109. "Final Report by the Select Committee to Investigate Bondholders Reorganizations" (authorized by House Resolution 412, 73rd Congress, 39, 79 and 354, 74th Congress, Adolph J. Sabath, Chairman, U. S. Government Printing Office, 1938); pages 60-61.

SUPPORTING BRIEF.

I.

If a Case Is Arbitrarily and Capriciously Decided, in Violation of Settled Principles of Law, or Contrary to Undisputed Facts, Though the Court So Deciding Has Jurisdiction, the Judgment Is in Violation of Due Process of Law Under Either the Fourteenth or Fifth Amendments and the United States Supreme Court Should and Will Review and Correct the Error.

Postal Telegraph Cable Co. v. *City of Newport,* 247 U. S. 464, 38 S. Ct. 566; (1918).

Williams v. *Tooke,* 108 F. (2d) 758, 759 (C. C. A. 5, 1940).

Cities Service v. *Dunlap,* 308 U. S. 208 (1939).

II.

Circuit Courts of Appeals and Other Courts of Review Are Bound to Proceed in Accord With Due Process of Law.

Lutcher & Moore Lumber Co. v. *Knight,* 217 U. S. 257, 30 S. Ct. 505 (1910).

Saunders v. *Shaw,* 244 U. S. 317 (1917).

(a) When the Circuit Court of Appeals reversed findings of fact of the District Court, which findings had not been contested by respondents in their assignment of errors or otherwise, it violated due process of law because that action denied this petitioner notice, hearing and his day in court.

Saunders v. *Shaw,* 244 U. S. 317 (1917).

Lutcher & Moore Lumber Co. v. *Knight,* 217 U. S. 257, 30 S. Ct. 505 (1910).

Morgan v. *United States,* 304 U. S. 1 (1938).

Principal Questions Involved, C, p. 47.

(b) When the Circuit Court of Appeals reversed the findings of the District Court and in effect wrote new findings of fact it denied this petitioner a full hearing in violation of due process of law, because the new findings of fact excluded and ignored facts which should have been considered, and did not embrace the basic facts at issue as shown by the record.

Morgan v. *United States,* 298 U. S. 468 (1936).

"Salient Omissions" this petition.

Principal Questions Involved, C, p. 48.

(c) Assignments of error which are not discussed in Appellant's brief are abandoned and should be dismissed outright.

Andrews v. *Drake,* 83 Fed. (2d) 767 at 774.

Mittry Bros. Const. Co. v. *U. S.,* 75 Fed. (2d) 79 at 82.

U. S. v. *Hayes,* 20 Fed. (2d) 873 at 877.

(d) Decree should be affirmed for failure to argue the substantial assignments of error in Court of Appeals.

E. R. Squibb and Sons v. *Mallinckrodt Chemical Works,* 293 U. S. 190.

III.

Under Illinois Law City National, the Bondholders Committee, and Their Counsel Were Guilty of a Breach of Trust and Fiduciary Duty When They (Without Notice or Disclosure) Represented as Trustee and Agent the Adverse Interests of Arlington Inc. and Others.

Lerk v. *McCabe,* 349 Ill. 348, 182 N. E. 388 (1932).

Chicago Title & Trust Co. v. *Schwartz,* 339 Ill. 184, 171 N. E. 169 (1930).

Metcalf v. *Metcalf,* 286 Ill. App. 10, 2 N. E. (2d) 760 (1936).

Principal Questions Presented, A, p. 36; B, p. 38.

Chicago and American Bar Association Canons of Professional Ethics "6" and "37", Appendix "E", p. 69.

IV.

The Circuit Court of Appeals Erred in Not Dismissing These Appeals as Requested by Petitioner's Motions, Since Appeals Taken by the Wrong Manner Do Not Confer Jurisdiction.

In Re Prudence Bonds Corporation, 111 Fed. (2d) 87.

In Re Dickinsor, 309 U. S. 382.

Alaska Packers v. *Pillsbury,* 301 U. S. 174.

Union Trust Company of Maryland v. *Townshend,* 101 Fed. (2d) 903 at 914.

(a) The order of the Circuit Court of Appeals on July 21, 1939, granting an extension of time to file record (as asked by the motion of July 19, 1939), was void and ineffective since appellants were in default when the time expired on July 11, 1939.

West v. *Irwin,* 54 Fed. 419 (C. C. A. 7).

(b) The order of the Circuit Court of Appeals granting an extension of time within which to file the record was void. The Federal Rules of Civil Procedure gave that exclusive power only to the District Court.

Rule 73 (g) of the Federal Rules of Civil Procedure, page 51, this Petition.

V.

Delaying Creditors by Any Means Is a Fraudulent Transaction and Forbidden by the Statutes of Frauds.

Weber v. *Mick,* 131 Ill. 520.

Sherwin Williams Co. v. *Watson Industries,* 361 Ill. 599 at 605.

Adams v. *Deem,* 296 Ill. App. 571.

VI.

By Statute in Illinois Which Reenacted an Act of 13 and 29 Eliz. 1568 and 1684, No Transaction in Court or Outside, Aids a Fiduciary or Binds a Beneficiary of Trust, No Matter How Solemnly a Release Is Made, Unless and Until There Has Been a Prior and Complete Disclosure Honestly Made.

Chap. 59, Section 4, Ill. Rev. Stats. 1939.

White v. *Sherman,* 168 Ill. 589, 605, 610.

Kinney v. *Lindgren,* 373 Ill. 415, 422.

Nonnast v. *Northern Trust Co.,* 374 Ill. .....

VII.

Corporate Trustees Are Held to a High Degree of Fidelity and Ability. "Trust Companies Seek This Character of Business, Claiming That They Are Specially Qualified and Financially Responsible." "Good Faith Alone Will Not Protect a Trustee, But He Must Also Exercise Diligence, Prudence and Absolute Fidelity."

In Re Clark's Will, 242 N. Y. S. 210.

Harrison v. *First Wisconsin Trust Co.,* 191 Wis. 23; 209 N. W. 945, 947.

Busby v. *First National Bank of Chicago,* 288 Ill. App. 500, 520; 6 N. E. (2d) 451 at 459.

United States National Bank and Trust Co. v. *Sullivan,* 69 F. (2d) 412 at 415.

VIII.

There Is a Direct Conflict Between the Ruling by Seventh Circuit Court of Appeals at Bar That a Foreclosure Decree Can Be Superior to the Bankruptcy Court, and the Contrary Ruling by the Circuit Court of Appeals for the Sixth Circuit That the Bankruptcy Statute and the Bankruptcy Court Are Paramount.

Butzel v. *Webster Apartments Co.*, 112 Fed. (2d) 362 at 366, (C. C. A. 6, 1940).

In Re Granada Apartments, Inc., 111 Fed. (2d) 834 at 839 (C. C. A. 7, 1940).

Bankruptcy Act, S. 77B, sub. i, 11 U. S. C. A. S. 207, sub. i, and Section 2(21) Chandler Act.

Second Salient Omission, p. 25.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

Nos. 281-282

IN THE MATTER OF GRANADA APARTMENTS, INC.,
DEBTOR.

WEIGHTSTILL WOODS, COURT TRUSTEE,
Petitioner,

vs.

CITY NATIONAL BANK AND TRUST CO. OF CHICAGO, AND OTHERS,
Respondents.

PETITIONER'S REPLY TO THE ANSWER.

WEIGHTSTILL WOODS,
77 West Washington Street,
Chicago, Illinois,
Attorney for Petitioner.

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PETITIONER'S REPLY TO THE ANSWER.

Respondents' answer does not attempt to discuss the three most important "Principal Questions Presented". Question "A" at page 36 of the Petition, "B" at page 38 and "C" at page 46, together with your petitioner's conclusions, are all unchallenged and admitted. The failure by respondents to assign error to the District Court's findings, as disclosed by the digest at pages 63-68 of the petition, is likewise conclusive since respondents by failing to question this summary have admitted its accuracy. The charge by pettioner as to the fundamental breach of trust by respondents, is not discussed nor denied in respondents' answer.

Respondents say (page 10 of answer) that they resent the charge that they are part of the surging trend toward

untrustworthy trusteeships, which trend is rampant in Chicago. This petitioner states that such trend is the exact situation. Petitioner respectfully states also that the Circuit Court of Appeals for the Seventh Circuit has adopted a policy of making large fee awards to lawyers, bondholders' committees and trustees in corporate reorganization cases, and that this policy has given impetus to the widespread abuses complained of. Respondents are promoting this dangerous policy.

THE CIRCUIT COURT OF APPEALS IS "GENEROUS".

This petitioner in tracing to its source this dangerous trend toward the breakdown of trust relationships, respectfully shows that he has found the real reason for multiple, adverse and undisclosed breaches of trust conduct. Fee awards are so high, that trust companies and lawyers regard the risk of being "found out" as worth taking. Who is responsible for the high fee awards? Not the United States District Court sitting in Chicago. Its efforts have been in the opposite direction.

This petitioner has made a study of the fees awarded by the United States Circuit Court of Appeals for the Seventh Circuit, and now submits what he found. The chart from this study is included as a part of this reply. (Appendix "A".)

In the Seventh Circuit since 1935, when fee appeals from corporate reorganization cases began, the Court of Appeals has

(1) increased the fees in seventeen appeals,

(2) has decreased the fees in *only two* cases.

This shows a policy and an attitude. It shows that policy and attitude upon which respondents and other Chicago professional reorganizers have learned to profit.

So bold are these reorganizers that when a District Judge refuses to be "generous" they go to the Circuit Court of Appeals and ask that court for writs of prohibition against the Judge. (*Davis* v. *Barnes, Judge,* 105 Fed. (2d) 226.)

Your petitioner urges that such practices are all against the purpose of reorganization laws. All of this continues despite Your Honors' direction that,

> "The history of fees in corporate reorganizations contains many sordid chapters. One of the purposes of paragraph 77B was to place those fees under more effective control." (*Dickinson Industrial Site* v. *Cowan,* 309 U. S. 382 at 388, 1940.)

Petitioner submits that the Circuit Court of Appeals for the Seventh Circuit have not heeded the main purpose of 77B nor the Chandler Act. The fact is that the fees situation is under less control in this circuit than ever before.

The primary freedom under protection by this court is the inviolability of property right. When that property is siphoned away as swollen fees and expenses of sundry kinds in the federal courts, the heart of the constitution is swept away. The citizen receives, not protection but spoliation. The case at bar is an adequate example.

In Conclusion.

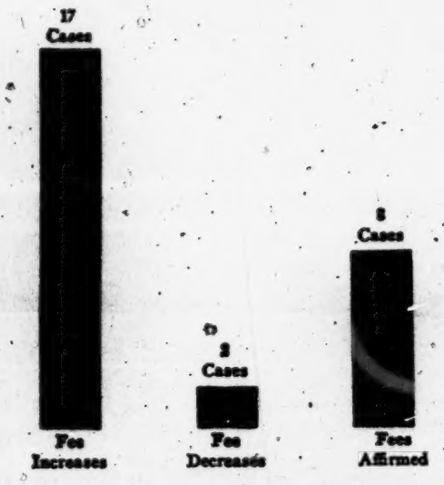
Wherefore, your petitioner prays that a writ of certiorari be granted him as prayed for in his original petition.

Weightstill Woods,
Attorney for Petitioner.

Appendix A to Reply by Court Trustee

FIVE AND ONE-HALF YEARS OF CORPORATE REORGANIZATION FEE APPEALS IN THE SEVENTH CIRCUIT COURT OF APPEALS

From Insull to Granada 1935-1940



In the 27 fee appeals by lawyers, bondholders committees and trustees in corporate reorganization proceedings the Circuit Court of Appeals for the Seventh Circuit has in:

17 cases increased the fees above the award of the District Court Judge;

2 cases decreased the fees below the award of the District Court Judge; and in

8 cases has affirmed the fee allowance of the District Court Judge.

THE SEVENTEEN CASES WHEREIN FEES WERE **INCREASED** ON APPEAL

Title of Case and Citation	Date	Type of Case	Disposition of Case on Appeal.
1. Bondholder's Protective Committee vs. Milwaukee Lodge No. 46. (83 Fed. (2d) 662.)	4/29/36	Reorganization Committee and depositary fee and expenses case. (Lawyer's fee included in committee claim.) Disallowed.	*Reversed*—Held that court erred in disallowing committees compensation and expense claim, because committee occupied *adverse relation* to debtor. (INCREASE.)
2. Chicago Title & Trust Co. vs. Tudor Gables Building Corp. (83 Fed. (2d) 871.)	5/ 1/36	Reorganization Committee fee claim case. Fees denied to Committee.	*Reversed*—Held that court erred in saying it could not give fees for services of committee rendered prior to reorganization, and cause is reversed to fix value, if any, of those services. (INCREASE.)
3. In re Grocery Center, Inc. (83 Fed. (2d) 617.)	5/29/36	Reorganization attorney's fee claim case. (Asked $7,000.) Disallowed.	*Reversed*, held that court's refusal to allow fees to attorneys for interveners because it would be a dangerous precedent and bad practice was error and was a refusal to comply with statute which says court "may allow" such interveners fee allowances. (INCREASE.)
4. In re T. L. Smith Company. (83 Fed. (2d) 665.)	5/29/36	Reorganization committee's claim for attorneys fees, etc. disallowed because of adverse positions of claimants.	*Reversed*, held that court erred in disallowing committee's claim for fees, expenses and attorneys fees on ground that claimants held position *adverse* to debtor. (INCREASE.)
5. City National Bank & Trust Company of Chicago vs. Sheridan-Melrose Building Corporation. (86 Fed. (2d) 2.)	10/22/36	Reorganization case wherein Trustee (City National) and Bondholders Committee (C. S. Tuttle, *et al.*) asked Federal Court to allow fees for services rendered prior to Federal Reorganization proceedings. Fees denied.	*Reversed*, held that District Court had authority and should fix reasonable compensation for services rendered by attorneys and others for the parties prior to filing of Federal reorganization proceedings. (INCREASE.)
6. Chicago Title & Trust Co. vs. 7000 South Shore Drive Building Corp. (86 Fed. (2d) 499.)	11/ 7/36	Reorganisation case, fixing fees for lawyer's services in another case in a state court on accounting of trustee in Federal District Court.	*Reversed*, held that District Court was without jurisdiction to eliminate credit on trustee's account of $3,000 paid to attorney in another case in state court. (INCREASE.)
7. Chicago Title & Trust Co. vs. Deluxe Court Apartments, Inc. (86 Fed. (2d) 772.)	12/10/36	Reorganization case, fixing of fees for state court services and bankruptcy services of trustee and lawyers on accounting of trustee in Federal District Court.	*Reversed*, held that District Court had no authority to reduce fees awarded by state court to attorneys from $4,000 to $1,500, of trustee from $1,100 to $800. (INCREASE.)
8. Chicago Title & Trust Company vs. 1090 North Dearborn Building Corporation. (86 Fed. (2d) 775.)	12/10/36	Reorganization case, fixing fees for trustee's and lawyer's services in both state court foreclosure case and bankruptcy proceedings on accounting in Federal District Court.	*Reversed*, held that District Court had no authority to disallow $14,000 item for lawyers fees in accounting of trustee. Such fee having been allowed in state court foreclosure decree. (INCREASE.)
9. In re Tower Building Corp. (88 Fed. (2d) 347.)	2/23/37	Reorganization fee case wherein committee asked for compensation and expenses in addition to $19,980 paid prior to Federal reorganization proceedings. District Court holds that present claim of $25,939.23 is set off by prior payment.	*Reversed*, held that District Court had no jurisdiction to offset prior payment against present fees. (INCREASE.) (For subsequent proceedings on fee claims see *Davis, v. Barnes, Judge*, 105 F. (2d) 226 wherein a writ of prohibition was sought against the trial court by the Bondholders Committee.)
10. Strauss vs. Pine Block Building Corporation. (90 Fed. (2d) 238.)	5/22/37	Reorganization fee case wherein state court in foreclosure action had allowed trustee and attorney a total $7,550 for services rendered and "to be rendered" which District Court reduced to $2,250 and also disallowed an expense item in trustee's account.	*Reversed*, in part, held that services "to be performed" allowed reduction of fees by District Court but that court was without jurisdiction to disallow expense item already incurred. (INCREASE.)
11. Bondholder's Committee vs. Central Shorewood Building Corporation. (90 Fed. (2d) 725.)	6/14/37	Reorganisation fee case wherein (1) attorney in state court foreclosure proceedings was allowed fees (which were not ordered paid) which fees were reduced by the District Judge and (2) the bondholder's committee claimed a $1,000 fee which was wholly disallowed.	*Modified* and not remanded. Circuit Court of Appeals holds that District Judge should (1) not have reduced fee award of attorney in foreclosure proceedings and (2) should have allowed in full claim of committee for its and counsel services. (INCREASE.)
12. In re Shorewater Corporation. (94 Fed. (2d) 261.)	1/21/38	Reorganization fee case wherein state foreclosure court had ordered payment of certain fee to attorney and District Court Judge had in Federal proceedings disallowed attorney's claim.	*Reversed*, and claim of attorney ordered paid in full on basis that (1) District Court had no jurisdiction to disallow fee fixed by state court and (2) that claim was reasonable. (INCREASE.)
13. In re Watco Corporation. (95 Fed. (2d) 249.)	2/ 5/38	Reorganization fee case wherein District Court (1) reduced the fees as awarded to lawyer by state court foreclosure decree and (2) disallowed in total all claims for legal services rendered in Federal reorganization proceedings.	*Modified* (Reversed) so as to provide for payment in full of all claims by three law firms based on state court decree despite fact that: "The property has not been able to pay all the taxes which have been assessed against it. The bondholders have received no interest for many, long seasons." (Opinion of the court at page 251.) (INCREASE.) *Reversed*, held that claim should be allowed because trust deed so provided. Case remanded for reconsideration and for determination of amount of allowance to be made. (INCREASE.)
14. In re Buildings Development Co. (96 Fed. (2d) 841.)	7/27/38	Reorganization fee case wherein former trustee made claim for services performed prior to Federal reorganization proceedings which claim was disallowed by District Court Judge because (1) claimant's only services were performed for creditors; i. e., bondholders and not for debtor, (2) claimant's services were not performed in reorganization proceedings.	
15. Empire Building Protective Committee vs. Buildings Development Company. (96 Fed. (2d) 844.)	7/27/38	Reorganization fee case wherein a bondholders protective committee made claim for (1) services rendered prior to reorganization proceedings and (2) services rendered after institution of such proceedings, both of which were disallowed by District Court.	*Reversed*, held that although court could exercise discretion as to (1) that court as a matter of law was bound to grant claim (2) and could not refuse to award such compensation as it should after hearing fix. (INCREASE.)
16. In re Albert Dickinson Co. (104 F. (2d) 771.)	5/22/39	Reorganization fee claim case wherein District Court allowed the Bondholder's Committee $2,000 instead of the $22,000 claimed. Appeal by the Committee.	*Modified*, held that the allowance was an abuse of discretion and fees of Bondholders' Committee fixed at $10,000,—not remanded. (INCREASE.)
17. In re Granada Apartments, Inc. (111 Fed. (2d) 834.)	3/26/40	Reorganization fee claim case wherein District Court disallowed (1) claim of committee, (2) claim of attorneys for work done in state court foreclosure proceedings and (3) claim of state court trustee on basis that the frauds and breaches of trust of the parties disentitled them to fees and that their services did not contribute to the debtor estate. Claim of trustee $10,940.90 (including solicitors' fees of $6,200). Claim of committee for expenses incurred $2,205.21 plus fees. Claim of attorneys was not stated except as "reasonable."	*Reversed*, held that all parties should be paid on a reasonable basis for their services and that additional $600 for the former trustee, $4,436.21 for the committee and $10,000 for attorneys were inadequate and should all be increased. (INCREASE.)

16. In re Albert Dickinson Co. (104 F. (2d) 771.)	5/22/39	Reorganization fee claim case wherein District Court allowed the Bondholder's Committee $2,000 instead of the $20,000 claimed. Appeal by the Committee.	*Modified*, held that the allowance was an abuse of discretion and fees of Bondholders' Committee fixed at $10,000,—not remanded. (INCREASE.)
17. In re Granada Apartments, Inc. (111 Fed. (2d) 834.)	3/26/40	Reorganization fee claim case wherein District Court disallowed (1) claim of committee, (2) claim of attorneys for work done in state court foreclosure proceedings and (3) claim of state court trustee on basis that the frauds and breaches of trust of the parties disentitled them to fees and that their services did not contribute to the debtor estate. Claim of trustee $10,849.90 (including solicitors' fees of $8,250). Claim of committee for expenses incurred $2,285.21 plus fees. Claim of attorneys was not stated except as "reasonable."	*Reversed*, held that all parties should be paid on a reasonable basis for their services and that additional $500 for the former trustee, $4,485.21 for the committee and $10,000 for attorneys were inadequate and should all be increased. (INCREASE.)

THE TWO CASES WHEREIN FEES WERE DECREASED ON APPEAL.

1. In re Irving-Austin Building Corp. (100 Fed. (2d) 574.)	11/ 3/38	Reorganization fee case wherein $78,500 was allowed as total fees to several law firms who conducted an investigation as to alleged frauds and breaches of trust by officers of the debtor corporation.	*Modified*, held that a total of $10,000 was a sufficient fee since the finding of the Master was of doubtful soundness and amount in controversy was less than one-third of amount of fees charged. (DECREASE.)
2. In re Forty-one Thirty-six Wilcox Building Corporation. (100 Fed. (2d) 588.)	12/15/38	Reorganization case wherein fees were allowed attorneys for debtor after United States Supreme Court had determined that there was no jurisdiction for reorganization proceedings.	*Reversed*, held that work of attorneys did not contribute to a plan of organization or benefit the estate and that District Court had no jurisdiction so could not award fees. (DECREASE.)

THE EIGHT CASES WHEREIN THE CIRCUIT COURT OF APPEALS AFFIRMED THE FEE ALLOWANCES OF THE DISTRICT COURT JUDGE.

1. In re Insull Utilities Investments, Inc. (74 Fed. (2d) 510.)	1/ 2/35	Bankruptcy fee case.	Affirmed, $12,500 for Receiver; $12,500 for one firm of attorneys; $12,500 for another firm of attorneys. Already paid all parties and no further fees should be paid. (SAME.)
2. In re A. Herz, Inc. (81 Fed. (2d) 511.)	1/31/36	Reorganization fee case.	Affirmed, no fees to committee or attorneys of creditors. (SAME.)
3. In re National Lock Company. (82 Fed. (2d) 600.)	4/13/36	Reorganization fee case.	Fees to attorney properly made; fees to committee properly denied—affirmed. ($1,946.28 to committee, $8,000 to attorneys.) (SAME.)
4. In re Bryn-kan Corporation. (83 Fed. (2d) 873.)	5/13/36	Reorganization fee claim case.	*Affirmed*, held trustee not entitled to more than $750.00 for attorneys services in state foreclosure action, since trustee had lien which was undisclosed to court. (SAME.)
5. In re 333 North Michigan Ave. Building Corp. (84 Fed. (2d) 936.)	7/ 1/36	Reorganization Plan case.	*Affirmed*, held that plan of reorganization properly provided for payment of $119,000 to reorganization manager for work in state court prior to 77B proceedings and that this amount as allowed was proper. (SAME.)
6. Hoffenberg vs. 108 North Dearborn Building Corporation. (86 Fed. (2d) 167.)	10/28/36	Reorganization case wherein attorney contended that money claimed by Federal Trustee was his fee for services in state court foreclosure proceedings.	*Affirmed*, held that the right of attorney to money ($2,943.11) had not been adjudicated by state court and that District Court was not in error entering judgment against attorney for amount retained by him. (SAME.)
7. In re Park Beach Hotel Building Corporation. (96 Fed. (2d) 886.)	6/28/38	Reorganization fee case wherein (1) after Federal proceedings had started state court receiver obtained fee payment order from state court which District Judge disallowed on the accounting and ordered funds returned; and (2) District Court allowed fee to auditors for work done on accounting in Federal Court without hearing testimony as to reasonableness of charges and (3) ordered state court receiver to pay costs of the hearing and accounting proceedings.	*Reversed* in part and *Affirmed* in part, held that District Court was correct as to (1) and (3) but erred as to (2). Case remanded with directions to hear evidence on auditors' claim of $991.60. (SAME.)
8. In re Mayfair Building Corp. (97 Fed. (2d) 838.)	7/ 2/38	Reorganization fee case wherein a bondholders' committee petitioned for fees and expenses of $8,130 which the District Court allowed after deducting $3,000 previously paid the committee. From the deduction the committee appealed.	*Affirmed*, held that the committee had rendered services for many other bankrupt estates and that no showing was made as to what proportion of expenses were incurred in services rendered exclusively for debtor estate and what proportion for other estates, and that trial court was justified in making Reduction. (SAME.)

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OCTOBER TERM, A. D. 1940.

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Debtor.

WEIGHTSTILL WOODS, COURT TRUSTEE,
Petitioner,

vs.

CITY NATIONAL BANK AND TRUST CO. OF CHICAGO, AND OTHERS,
Respondents.

PETITIONER'S BRIEF.

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INDEX TO PETITIONER'S BRIEF.

	PAGE
Opinions Below	1
Jurisdiction	2
Statement of the Case	3
In the District Court	3
Background of the Record	4
In the Circuit Court of Appeals	9
Motion by Court Trustee to Dismiss	11
Assignment of Errors	12
Summary of the Argument	16
Argument:	
I. Bondholders' Committees, Trustees and Attorneys being fiduciaries are bound by the law of trusts to exercise undivided loyalty to their cestuis and if in breach of that trust duty such fiduciaries represent adverse interests without full disclosure and consent they are not, under the Chandler Act, entitled to any allowances	21
Status as Fiduciaries	21
Duties as Fiduciaries	23
The Law of Illinois	25
The Committee's Failure to Perform Its Duties as a Fiduciary	25
The Trustee's Failure to Perform Its Duties as a Fiduciary	35
The Lawyers' Failure to Perform Their Duties as Fiduciaries	45
Under the Chandler Act a Bankruptcy Court Is a Court of Equity	56
Sitting as a Court of Equity the District Court Properly Disallowed All the Claims of Respondents	58

Chart One (Breaches of Trust by the Committee) 64
Chart Two (Breaches of Trust by City National as Trustee) 65
Chart Three (Breaches of Trust by Defrees, Buckingham, Jones and Hoffman, as Counsel for the Committee) 67
II. A Circuit Court of Appeals is bound to proceed in accord with the principles of due process of law and may not reverse those findings of the trial court which were not contested nor assigned as error 71
III. A Court of Appeal cannot overrule the findings of fact of the trial court without first having analyzed the evidence upon which those findings were based 74
IV. A Circuit Court of Appeals has no jurisdiction of an appeal taken in violation of Section 250 of the Chandler Act and presented without a record having been filed as prescribed by Rule 73(g) of the Federal Rules of Civil Procedure. 76
V. A bankruptcy reorganization court has jurisdiction and power to disallow fee awards which have been made by state foreclosure courts. 81
In Conclusion 87
Prayer for Relief 91
Appendices:
Appendix "A" (Litigation Chart) 93
Appendix "B" (Former Fiduciaries) 94
Appendix "C" (Apartment Hotel Corporations). 96
Appendix "D" (Findings of Fact by the Trial Court to which Respondents did not assign error) 97
Appendix "E" (Facts of the case shown by admissions of record in the pleadings by respondents) 103

TABLE OF CASES.

Babcock v. Chicago Railways Co., 325 Ill. 16, 155 N. E. 773 (1927) 22
Bergelt v. Roberts, 144 Misc. 832, 258 N. Y. S. 905 (1932) 21, 24
Blaustine v. Pan American Co., 174 Misc., 601, 21 N. Y. S. (2d) 651 (1940) 16, 23
Busby v. First National Bank of Chicago, 288 Ill. App. 500 at 520, 6 N. E. (2d) 451 at 459 (1937) 24
Butzel v. Webster Apartments Co., 112 F. (2d) 362, 366 (1940) 20, 83
Carter v. First National Bank of Pocahontas, 128 Md. 581, 98 A. 77 at 80 (1916) 21
Chicago Title & Trust Co. v. Schwartz, 339 Ill. 184, 171 N. E. 169 (1930) 17, 25
Continental Illinois National Bank v. Chicago, Rock Island and Pacific Railway Co., 294 U. S. 648 (1935) 18, 56
Cushman v. Bonfield, 139 Ill. 219, 28 N. E. 937 (1891) .. 22
Davis v. Wakelee, 156 U. S. 680 61
Dickinson Industrial Site v. Cowan, 309 U. S. 382, 389 (1940) 16, 20, 22, 77
Dissenting opinion in U. S. v. Chicago, M., S. P. & P. Ry. Co., 282 U. S. 331 (1930) 18, 61
Dooley v. Pease, 180 U. S. 126 (1900) 19, 75
Edwards v. Lane, 331 Ill. 442, 451 (1928) 25
French v. Commercial National Bank, 199 Ill. 213, 65 N. E. 252 (1902) 17, 40
Gillespie v. Piles & Co., 178 Fed. 886 at 892 (1910) ... 90
Goranson v. Solomonson, 304 Ill. App. 80, 25 N. E. (2d) 930, 931-32 (1940) 22
Harrison v. First Wisconsin Trust Co., 191 Wis. 23, 209 N. W. 945, 947 24
H. H. Cross Co. v. Simmons, 96 F. (2d) 482, 486 75
In Re Clark's Will, 242 N. Y. S. 210 24
In Re Consolidation Coal Co., 14 F. Supp. 845, 855 (1936) 17, 31
In Re Curtis, 100 Fed. 784, 795 89
In Re DeRan, 260 Fed. 732, 741 (1919) 18, 61
In Re National Lock Co. (C. C. A. 7), 82 F. (2d) 600, 603 (1936) 17, 31

In Re Peacock Food Markets, 108 F. (2d) 453, 457 75
In Re Perelstine (D. C. Pa. 1930), 44 Fed. (2d) 62..18, 60
Isenberg v. Trent Trust Co. (C. C. A. 2), 31 F. (2d) 553 (1929) 16, 24
Jackson, Receiver v. Smith, 254 U. S. 586, 588 (1920) 16, 23, 25
Lerk v. McCabe, 349 Ill. 348, 182 N. E. 388 (1932) 17, 25
Lutcher & Moore Lumber Co. v. Kinight, 217 U. S. 257 (1910) 19, 71
Magruder v. Drury, 235 U. S. 106 (1914) ..16, 17, 25, 54, 72
Metcalf v. Metcalf, 286 Ill. App. 10, 2 N. E. (2d) 760 (1936) 17, 25
Monticello Bldg. Corp. v. Monticello Investment Co., 330 Mo. 1128, 52 S. W. (2d) 545 (1932).....21, 24
Morgan v. United States, 304 U. S. 1 (1938).....19, 73
Morgan v. United States, 298 U. S. 468 (1936).....19, 73
Nichol v. Sensenbrenner, 220 Wis. 165, 263 N. W. 650 (1935) 21
Nonnast v. Northern Trust Co., 374 Ill. 248, 29 N. E. (2d) 251 (1940) 17, 25
Parker v. New England Oil Corp., (D. C. 1924) 4 Fed. (2d) 392 21
Pepper v. Litton, 308 U. S. 295 (1939) ..18, 20, 56, 58, 84-86
Postal Telegraph Cable Co. v. City of Newport, 247 U. S. 464 (1918) 19, 73
Reconstruction Finance Corporation v. Prudence Securities Advisory Group, 111 Fed. (2d) 37 (1940).. 78
Saunders v. Shaw, 244 U. S. 317 (1917) 19, 71
Scavenger Service Corp. v. Courtney, 85 F. (2d) 825, 831 75
Shulman v. Wilson-Sheridan Hotel Company, 301 U. S. 172 (1937) 20, 78
Steere v. Baldwin Locomotive Works, 98 F. (2d) 889, 892 (1938) 17, 32
United Waterworks v. Omaha Water Co., 164 N. Y. 41, 58 N. E. 58 (1900) 21
U. S. v. Tyrakowski, 50 F. (2d) 766, 771 75
Weil v. Neary, 278 U. S. 160, 173 (1929) 16, 23
West v. Irwin (C. C. A. 7), 54 Fed. 419 .....20, 79

Texts Cited.

XXV. American Bar Association Journal, September, 1939, (Address of Prof. Roscoe Pound) 75
Bogert, "The Law of Trusts and Trustees," (1935) 16, 18, 24, 60
Loring "A Trustee's Handbook" of 1940, Little Brown and Company and editions of 1928, 1907 and 1898.. 60
34 Michigan Law Review, 331 at 342-343 (1936) 18, 57

Statutes.

Bankruptcy Act, Section 2, Chapter II 18, 56
Canons 6, 32, 37 of the Chicago and American Bar Association 16, 22
The Chandler Act:
Section 114 ..... 18, 57
Section 158 ..... 17, 30
Section 211 3
Section 212 ..... 18, 57
Section 213 3
Section 249 ..... 16, 22
Section 250 ..... 20, 77, 80
Section 258 ..... 20, 84
Fifth Amendment, Constitution of the United States .. 18, 71
Illinois Revised Statutes (1939), Section 4, Chapter 59 ..... 17, 40

Rules.

Rule 52 of the Federal Rules of Civil Procedure at 28 U. S. C. A., following Section 723c 19, 74
Rule 73(g), Federal Rules of Civil Procedure 20, 78, 79
Rule 10 of Circuit Court of Appeals 79

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

Nos. 281-282.

IN THE MATTER OF GRANADA APARTMENTS, INC.,
DEBTOR.

WEIGHTSTILL WOODS, COURT TRUSTEE,
Petitioner,

vs.

CITY NATIONAL BANK AND TRUST CO. OF CHICAGO, AND OTHERS,
Respondents.

To the Honorable Justices of the Supreme Court of the United States:

Opinions Below.

The United States District Court's findings of fact and conclusions of law were not published in the Federal Supplement, but are to be found at pages 769 to 794 of the printed record. The District Court's decree is to be found at pages 794-795 of the printed record.

The opinion of the United States Circuit Court of Appeals for the Seventh Circuit is to be found at 111 Fed. (2nd) 834 and at pages 935 to 969 of the printed record.

Jurisdiction.

In the exercise of the judicial power granted to this court by Article III of the Constitution of the United States, Your Honors assumed appellate jurisdiction of the cases at bar on October 14, 1940, by issuing writs of certiorari to the Circuit Court of Appeals for the Seventh Circuit.* The cases were presented to Your Honors upon the petition for certiorari duly filed by this petitioner on July 25, 1940, pursuant to Section 240(a) of the Judicial Code. The cases arose under the laws of the United States, *i. e.*, the Chandler Act and the Federal Rules of Civil Procedure and also under the Constitution of the United States, *i. e.*, the Fifth Amendment.

The petition for certiorari stated that the case presented five principal questions. These questions are:

First. When a "Bondholders' Committee" in violation of its fiduciary relation to the bondholders has represented adverse interests without disclosing such fact, does the law permit fees and expenses to be allowed to such a committee in a Federal reorganization proceeding?

Second. As a matter of law, are a trustee and its attorneys (all of whom have committed breaches of trust and have represented adverse interests without disclosure) entitled to fees in a Federal reorganization proceeding?

Third. Must a Circuit Court of Appeals function according to due process of law and decide the case on the issues raised in the District Court, or can it (without notice or hearing) in violation of constitutional law reverse the trial court's findings, which findings were not contested or assigned as error in either court?

Fourth. May a court of appeal reverse and overrule the findings of fact by the trial court, contrary to Rule 52 of Civil Procedure, and without analysis of the evidence upon which those findings were made?

* PR. 1638.

Fifth. Has a Circuit Court of Appeals jurisdiction of an appeal taken in violation of Section 250 of the Chandler Act and presented without a record having been filed as prescribed by Rule 73(g) of the Federal Rules of Civil Procedure?

The jurisdiction of the United States District Court was based upon the Bankruptcy Laws of the United States as enacted and amended by the Congress.

The jurisdiction of the Seventh Circuit Court of Appeals is denied by the petitioner. This contention is discussed at Point IV of the Argument.

Statement of the Case.

In the District Court.

On one October afternoon at the Federal Courthouse in Chicago, two men were concerned about the affairs of a bankrupt apartment house property, then on trial and under investigation. A claim of a bondholder's committee for fees (and other pleadings) had been filed.[1] The momentary inquiry was to find out how the committee had come into being. One man was the United States District Judge. The other man (on the witness stand) was a member of this bondholders' committee whose name was Mr. Sturm. The inquiry pursued under the statute,[1-A] was about the Granada Bondholders' Committee. The Granada Apartments Inc., was before the court on voluntary and involuntary petitions[2] for reorganization under the bankruptcy act. The Judge's inquiry as to why the witness and another committee member (Mr. Tuttle) who were both employed by the City National Bank and Trust Company (which was former successor trustee),[3] had allowed themselves to

1. Claim filed on September 14, 1937. PR. (Printed Record) 82-83.

1-A. Sections 211 (11 U. S. C. A. S. 611) and 213 (11 U. S. C. A. Sec. 613) of the Chandler Act.

2. Filed in April of 1937.

3. PR. 79. Until possession was taken by the Federal Court Trustee on May 17, 1937.

be put on the committee, brought forth this answer. Mr. Sturm testified:[4]

> "Well, because of the fact we had the reorganization, and we were acting with other committees who served other trust companies' issues, because the Chicago Trust Company distributed forty per cent of this issue and we thought it was only proper and right that some of our personnel should act on this committee."

The Judge then asked:[4]

> "And the Chicago Trust Company had been absorbed by the National Bank of the Republic, and the National Bank of the Republic was absorbed by the Central Republic Bank and Trust Company, and the Central Republic Bank and Trust Company was absorbed by the Central Republic Trust Company and that was absorbed by the City National Bank and Trust Company, and the City National Bank and Trust Company was reorganized and it was transacting the business of the Central Republic Bank and Trust Company, is that correct?"

The witness replied:[4]

> "I don't think that is entirely correct, Your Honor. The City National absorbed some of the fixed liabilities of the other banks, and it did take over * * *."

The Judge then asked:

> "Now the City (National) was servicing the Central Republic Bank and Trust Company?"

To which the witness replied:[4]

> "It did service many of the trusts of the former banks * * *."[4-A]

Voluminous evidence equally damaging to all the respondents, was taken for a month in open court.

Background of the Record.

The court had appointed the petitioner at bar as Court Trustee of this Granada Apartments, Inc., which was an Illi-

4. PR. 202-203.

4-A. Another witness testified that:
"From the time the City National was organized * * * it serviced Central Republic Trust Company so far as trust service was concerned; City National took over Granada business." PR. 230-231.

nois Corporation with charter dated 1929.[4-B] The Court Trustee by order of the court had investigated the fee claims which were now on trial.[5]

The respondent Bondholders Committee had filed a claim for fees; and also for expenses of $2,285.21.[5-A]

Respondent City National Bank and Trust Company of Chicago had filed a proof of claim,[5-B] based upon services rendered in prior state court proceedings, which included a claim for solicitor's fees to Defrees, Buckingham, Jones and Hoffman, for legal services in the state court.

Respondent law firm, Defrees, Buckingham, Jones & Hoffman, for itself had filed a petition for allowance of counsel fees, claiming that they had done legal work for the committee.[5-C] This firm claimed a balance of $24,500[6] was due and owing to them, to be paid by the reorganization court, as fees for legal services. The firm had been paid $6,500 from Granada moneys by the other respondents, who ask approval for that payment.

For ten years prior to the filing of these claims the Granada property had been kept in court, with yearly increase of financial difficulties. These difficulties were evidenced by various litigations[6-A] with consequent expenses and delays in meeting creditors' demands. They were testified to by a member of the law firm which claimed the $24,500 fee balance.[6-B]

The District Court found that such litigations were started for the purpose of delaying, embarrassing and harassing creditors of the Granada estate,[6-C] and did so hinder, defraud and delay such creditors.[7]

4-B. PR. 776.
5. PR. 769-770.
5-A. PR. 82-83.
5-B. PR. 79-86.
5-C. PR. 151.
6. PR. 496.
6-A. See Appendix "A".
6-B. PR. 473-504.
6-C. PR. 785.
7. PR. 788.

The District Court found that the Bondholder's Committee was a mere department of the City National Bank;[7-A] that its membership represented adverse and conflicting interests; that it had taken no constructive action,[7-B] and as such was not entitled to a fee or expense allowance.[7-C]

Objections to these claims had been made by the Court Trustee,[8] asserting among other things that said state court by its decree refused to allow the claims of respondents, and that they are without equity.

Pleadings: Re City National Accounting.

Voluntarily on August 30, 1937, respondent City National Bank and Trust Company of Chicago filed in the reorganization proceedings its report and account as appointed indenture trustee,[9] to which the petitioner, Court Trustee, objected and made counterclaim[10] asking that certain items be surcharged. This counterclaim and objections urged (a) that respondent City National and its counsel had served conflicting and adverse interests in the state foreclosure proceedings,[11] and that they were not entitled to fees; the District Court after hearing evidence so found.[12] (b) That respondent City National had committed waste upon the Granada property,[13] and the District Court after hearing the evidence so found.[14] (c) That damages treble the amount of such waste should be assessed against respondent,[15] and the District Court so found.[16] (d) That respondent City National was a voluntary trustee *de son tort*, was liable for its acts, but had no

7-A. PR. 782-784.
7-B. PR. 783 and PR. 787-788.
7-C. PR. 794-795.
8. PR. 84.
9. PR. 111-126.
10. PR. 127-139.
11. PR. 127.
12. PR. 787-788; PR. 779; PR. 781.
13. PR. 128-129.
14. PR. 789-790.
15. PR. 129-130.

equity to claim payment for services,[17] and the District Court so found.[18] (e) That respondent City National failed to require a full accounting from its predecessor trustees, for which failure it should be surcharged[19] and held responsible for, and the District Court found that there had been numerous instances when the questionable dealings of prior fiduciaries (for a list of these "fiduciaries" see Appendix "B") should have been examined and accounted for,[20] and that (f) respondent City National itself and its attorneys (who had handled the Granada affairs for many years) knew of these transgressions of the law by these prior parties, but demanded no accounting and in some instances even aided and abetted the completion of illegal schemes and transactions commenced by prior fiduciaries, and that respondent should be held accountable for losses to debtor estate arising from such acts and failures to act.[21]

More particularly the objections and counterclaim of the petitioner stated that respondent and its counsel had wrongfully refused and failed to turn over certain Granada cash funds ($1,990.86) pursuant to court order of May 17, 1937,[22] and the District Court so found.[23]

The objections further charged that respondent in 1936 without authority had used Granada funds in the amount of $10,186, to pay court costs, fees and legal expenses never earned,[24] and the court so found.[25] That respondent as trustee in possession prior to May 1937, had over-

17. PR. 130.
18. PR. 789; R. 421, PR. 791.
19. PR. 132.
20. PR. 772-782.
21. PR. 781, Par. 36; PR. 778, Par. 26; PR. 779, Par. 28; PR. 787, Par. 48; PR. 773, Par. 14; PR. 774, Par. 16; PR. 775, Par. 20; PR. 776-77, Par. 23; PR. 777-778, Par. 24-25; PR. 780, Par. 32; PR. 781, Par. 35; PR. 782, Par. 37; PR. 785, Par. 44; PR. 788, Par. 50-51; PR. 789, Par. 54; PR. 789, Item 4.
22. PR. 133-134.
23. PR. 789, Item 3.
24. PR. 134.
25. PR. 789, Item 6.

charged for management fees[26] and the District Court so found.[27] That the costs of the present proceedings should be assessed against respondent and the court so found.[28] That respondent wilfully refused to pay certain current expense bills which it had incurred, due and owing from respondent to creditors, which bills necessarily had to be paid by petitioner to obtain continuance of utility and other services at Granada hotel,[29] and the court so found.[30] That by reason of collusive conduct in breach of fiduciary duties respondent City National Bank and Trust Company failed to charge Arlington, Inc., (a nearby hotel of which respondent City National was also trustee (see Appendix "C")); either the contract or fair and reasonable rate for heat, water and refrigeration services furnished by Granada, to the damage of the debtor estate in the sum of over $19,000 for which damages the respondent's account should be surcharged,[31] and the District Court so found.[32] That respondent as trustee of both Granada and Arlington by further breach of fiduciary duty and damage to Granada, paid valet commissions to Arlington, Inc., which commissions were earned by Granada rental space prior to May of 1937,[33] and the District Court so found.[34] That respondent by its neglect and in breach of its duty as trustee failed to make any effort to rent vacant space on lobby floor in the Granada property to the waste and damage of the debtor estate,[35] and the District Court so found.[36] Other breaches of trust conduct were also charged and found by the trial court.[37]

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26. PR. 134-135.
27. PR. 789, Item 5.
28. PR. 789, Par. 54 and Item 1.
29. PR. 136-137.
30. PR. 789, Par. 54.
31. PR. 137.
32. PR. 789, Par. 54 and Item 8 of R. 420, PR. 790.
33. PR. 138.
34. PR. 790, Item 7.
35. PR. 138.
36. PR. 790, Item 9.
37. PR. 789-790, Items 2, 4, 10.

The District Court ruled thus *against respondents:*

"By the decree December 18, 1936, the presiding Judge of the Superior Court refused to allow or consider any accounting of the funds." (Finding 30.)[40]

"The court finds that the claim No. 9 and all petitions by City National Bank and by the Bondholders Committee and its counsel for allowances shall all be denied, disallowed and dismissed for want of equity * * *." (Finding 58.)[41]

"That all petitions and claims for expenses and allowances by said City National, Bondholders Committee, and their attorneys and counsel, be now wholly disallowed and dismissed for want of equity." (Paragraph 2 of decree.)[42]

In the Circuit Court of Appeals.

Respondents filed in District Court a notice of appeal June 1, 1939; and also filed on June 12, 1939, a petition in the office of the Clerk of the Court of Appeals seeking an appeal by leave. These separate appeals were docketed as No. 7060 and No. 6986. Over objections by the Court Trustee, these two appeals later were consolidated by order October 4, 1939,[42-A] by the Seventh Circuit Court of Appeals. The appeals so taken by respondent City National Bank and Trust Company of Chicago, its attorneys and Committee, were taken from some findings of fact by the District Court, which findings were adverse to and against the respondents, and also from that part of the decree of the District Court which denied fees as trustee to City National and fees for its counsel, Defrees, Buckingham, Jones and Hoffman, and denied expense moneys to the "Bondholders Committee."

The assignment of errors for City National and associates, attacked only a small part of the findings, (see

40. PR. 779.
41. PR. 791.
42. PR. 794-795.
42-A. PR. 920-921.

below at Appendix "D") and attacked *only a few* paragraphs of the decree. The briefs for City National and associates, in the Circuit Court of Appeals argued *only part* of the findings mentioned by the assignment of errors, and argued only portions of the decree that were specified in their assignment of errors. Those findings and parts of the findings which stand uncontested by the "assignment of errors" which respondents filed[43] on June 12, 1939, are listed at Appendix "D". The legal effect of respondent's failure to assign and argue error to these findings, is to admit their accuracy and truth. Petitioner urges that the uncontested findings are sufficient to support the ruling against the respondents made by the District Court; and urges that Rule 52 of federal civil procedure forbids any reversal of any finding made in this record. Despite this record status, the Circuit Court of Appeals ordered the reversal of *all* the findings and the entire decree. Such action is outside the jurisdiction of any court of review.

This petitioner urged upon the Circuit Court of Appeals, that the pleadings and the findings disclosed in the record from the District Court, show such breaches of trust as to compel the disallowance of fees and expense monies to the respondents City National, the Bondholders' Committee and their counsel, pursuant to the applicable local law of Illinois and pursuant to federal law; and to require affirmance of those rulings by the District Court decree.

The theory of respondents was that (1) these breaches of trust did not occur or (2) if they did, respondents are still entitled to fees. Thus were issues drawn and settled in the District Court. The wrongs by the respondents as claimed by this petitioner, may be briefly outlined as follows:

(a) The representation, by City National, its law-

43. PR. 817-831.

yers and members of its Granada Bondholder's Committee, of Arlington, Inc., a competing hotel, not disclosed to Granada bondholders.

(b) The failure by City National, the Committee and their counsel to demand an accounting from predecessor trustees of Granada, despite the knowledge of City National, the Committee and the attorneys of wrongs committed by these trustees causing losses to Granada bondholders.

(c) The use by City National of its false Granada Bondholders' Committee, to represent to the District Court Judge that certain items (which were not debts against the Granada estate) should be provided for by the plan of reorganization, and ordered to be paid out of the debtor estate.

(d) The failure by City National to seek tenants and uses for the real property over which it asserted trusteeship, and its waste of the property and sundry income.

The opinion of the Circuit Court of Appeals[44] failed to express any moral or legal concern in regard to wrongs (a), (b) and (c). No sufficient fact analysis regarding these matters appears in the opinion. They remained undealt with. The opinion dealt only with contention (d) which was decided in respondent City National's favor. From this determination the court of appeals jumped to the conclusion that contentions (a), (b) and (c) should likewise be ruled on in favor of respondents. Orders were so entered by the Court of Appeals.[45]

Thus the Court of Appeals reversed entirely the trial court's findings and decree.

As is shown at page 38 of this brief the Appeals Court erred also in its determination of wrong (d).

Motions by Court Trustee to Dismiss.

The Court Trustee (petitioner) had made several motions before the Circuit Court of Appeals, to dismiss these appeals.[46] One reason assigned by the Court Trus-

44. PR. 955-969.
45. PR. 970-971.
46. PR. 887-895, 913-915, 925-941.

tee was on the ground that one of these appeals (7060) was taken as of right in violation of Section 250 of the Chandler Act and that the other appeal (6986) had not been perfected in accordance with Rule 73(g) of the Federal Rules of Civil Procedure. The Court of Appeals refused to grant these motions and entered orders denying them.[47] On June 22, 1940, the petitioner again made his motion[48] and also asked that costs be retaxed. This motion was denied by the court.[49] The entire question is discussed at Point IV of the argument in this brief.

On April 10, 1940, this petitioner filed his "Petition for Rehearing"[50] with the Circuit Court of Appeals. Respondent filed a curt answer[51] on April 20, 1940. The court denied the Petition for Rehearing on May 7, 1940.[52]

On October 14, 1940, writs of certiorari were granted by Your Honors.[53]

Assignment of Errors.

The Circuit Court of Appeals committed error in the following particulars:

(a) The Circuit Court of Appeals reversed findings of fact of the District Court which had not been assigned as error nor challenged by the respondents herein. (Appendix "D".)

(b) The Circuit Court of Appeals refused to decide these appeals upon the issues of fact and law as established by pleadings and proofs in the trial court, and by the assignment of errors and briefs in the Court of Appeals.

47. PR. 920-921, 953.
48. PR. 1013-1024.
49. PR. 1033.
50. PR. 973-990.
51. PR. 997-998.
52. PR. 999.
53. PR. 1038.

(c) The Circuit Court of Appeals deprived this petitioner of property without prior notice or hearing when it reversed all findings of the trial court on the basis of new law and facts not in issue in either court.

(d) The Circuit Court of Appeals in violation of Rule 52 of the Rules of Civil Procedure reversed and overruled the substantial findings of fact of the District Court, without analysis of evidence upon which those findings were based. The court discusses fragmentary testimony, counts noses, and seeks to weigh some evidence, contrary to any power possessed by such court of review.

(e) Many of the findings of fact made by the District Court upon hearing in open court without a reference, which are ignored, not mentioned or discussed in the Opinion of the Circuit Court of Appeals, are reversed by an omnibus order.

(f) The Circuit Court of Appeals orders expense monies and fees paid to a City National committee which, in violation of its fiduciary duty to the bondholders, had represented adverse and hostile interests without disclosing such facts to the bondholders or creditors. This despite the fact that any allowance of fees would be contrary to the express terms of the depositary agreement which specifies that there shall be no fees for the committee.

(g) The Circuit Court of Appeals orders fees paid to a bondholders committee, which had by pleading admitted that it did not take any constructive action in the reorganization of the debtor estate, but as shown by the record, had committed wrongs and injustices to said estate.

(h) The Circuit Court of Appeals orders fees paid to City National as former voluntary trustee, which in violation of its fiduciary duty to the bondholders and the debtor estate, had represented adverse and hostile interests without disclosing such facts to Granada owners.

(i) The Circuit Court of Appeals orders fees and expenses paid to City National as such trustee, who had by pleadings admitted that it had not at any time tried to have the prior fiduciaries perform their promises to the debtor estate or its bondholders, but had allowed statutes of limitation to run, and had itself committed wrongs and injustices to the debtor estate.

(j) The Circuit Court of Appeals orders fees paid to a firm of attorneys that had in breach of trust and ethics represented adverse and hostile interests without disclosure and consent, causing loss and detriment to the debtor estate.

(k) The Circuit Court of Appeals orders fees paid to a firm of attorneys, such trustee and such committee, all of whom had by pleading admitted that they had represented the former unfaithful fiduciaries, had tried to thwart and stay earlier Federal Reorganization proceedings, had represented adverse interests, and had committed many wrongs and injustices to the debtor estate.

(l) The Circuit Court of Appeals in violation of Section 250 of the Chandler Act asserted jurisdiction over an appeal for fees, which had been taken as of right by the filing of a notice of appeal in the District Court, and further erred in denying this petitioner's motion to dismiss such appeal and to retax costs.

(m) The Circuit Court of Appeals in violation of Section 73 (g) of the Rules of Civil Procedure, and contrary to said Section 250, and without power to enter such an order, allowed respondents motion to grant new time within which to file the record, and then without record being filed, ordered a consolidation with the adverse prior and competing appeal taken as of right by respondents.

(n) After the respondents had been eight days in default in completing appeal, they filed a motion to grant new time within which to file their record, and the Circuit

Court of Appeals erred in granting such motion, because by reason of the default the Court of Appeals had lost jurisdiction over the appeal.

(o) The Circuit Court of Appeals denied to petitioner an orderly proceeding adapted to the nature of the case. The procedure used by the Court of Appeals was not predictable under the prior rules and applicable statutes, but was so unreasonable arbitrary and capricious as to accomplish a destruction of the substantive rights of petitioner.

(p) Although the meaning of applicable rules and statutes was expressed in plain language not open to interpretation, the Circuit Court of Appeals makes an adverse and arbitrary application of said rules and statutes, contrary to judicial power and duty.

(q) The court erred in deciding the question of the jurisdiction and power of a bankruptcy court to review and readjust in a reorganization proceeding awards of fees made by a state court in a prior foreclosure proceeding. In the instant case the Seventh Circuit held that the Federal Bankruptcy Court had *no power* to disturb the state court award.

SUMMARY OF THE ARGUMENT.

In Response to the First and Second Questions Presented and to Assignments of Error (f), (g), (h), (j) and (k).

I.

BONDHOLDERS' COMMITTEES, TRUSTEES AND ATTORNEYS BEING FIDUCIARIES ARE BOUND BY THE LAW OF TRUSTS TO EXERCISE UNDIVIDED LOYALTY TO THEIR CESTUIS AND IF IN BREACH OF THAT TRUST DUTY SUCH FIDUCIARIES REPRESENT ADVERSE INTERESTS WITHOUT FULL DISCLOSURE AND CONSENT THEY ARE NOT, UNDER THE CHANDLER ACT, ENTITLED TO ANY ALLOWANCES.

Respondents having committed breaches of trust and having performed no beneficial services which can outweigh the detriment of such conduct were not entitled to fees and the bankruptcy court as a court of equity properly disallowed respondents' claims for fees.

Status as Fiduciaries:

Dickinson Industrial Site v. *Cowan*, 309 U. S. 382, 389 (1940).

Section 249 of the Chandler Act.

Canons 6, 32, 37 of the Chicago and American Bar Association.

Jackson, Receiver v. *Smith*, 254 U. S. 586, 588 (1920).

Duties as Fiduciaries:

Blaustein v. *Pan American Co.*, 174 Misc., 601, 21 N. Y. S. 651 (1940).

Weil v. *Neary*, 278 U. S. 160, 173 (1929).

Isenberg v. *Trent Trust Co.*, (C. C. A. 2) 31 F. (2d) 553 (1929).

Magruder v. *Drury*, 235 U. S. 106 (1914).

"The Law of Trusts and Trustees," Bogert, (1935), Vol. 3, Sec. 543, page 1730.

The Law of Illinois:

Nonnast v. *Northern Trust Co.*, 374 Ill. 248, 29 N. E. (2d) 251 (1940).

Metcalf v. *Metcalf*, 286 Ill, App. 10, 2 N. E. (2d) 760 (1936).

Lerk v. *McCabe*, 349 Ill. 348, 182 N. E. 388 (1932).

Chicago Title & Trust Co. v. *Schwartz*, 339 Ill. 184, 171 N. E. 169 (1930).

The Committee's Failure to Perform Its Duties as a Fiduciary:

The Record and Uncontested Findings of Trial Court as discussed in the argument.

Section 158 of the Chandler Act.

In Re National Lock Co., (C. C. A. 7) 82 F. (2d) 600, 603 (1936).

In Re Consolidation Coal Co., 14 F. Supp. 845, 855 (1936).

Steere v. *Baldwin Locomotive Works*, 98 F. (2d) 889, 892 (1938).

The Trustee's Failure to Perform Its Duties as a Fiduciary:

French v. *Commercial National Bank*, 199 Ill. 213, 65 N. E. 252 (1902).

Section. 4, Chapter 59, Illinois Revised Statutes, (1939).

The Record and Uncontested Findings of Trial Court as discussed in the argument.

The Lawyers' Failure to Perform Their Duties as Fiduciaries:

Magruder v. *Drury*, 235 U. S. 106, 113 (1914).

The Record and Uncontested Findings of Trial Court as discussed in the argument.

Under the Chandler Act a Bankruptcy Court Is a Court of Equity:

Continental Illinois National Bank v. *Chicago, Rock Island and Pacific Railway Company*, 294 U. S. 648 (1935).

Pepper v. *Litton*, 308 U. S. 295, 304 (1939).

Section 114 of the Chandler Act.

Section 2, Chapter II, of Bankruptcy Act.

Section 212 of the Chandler Act.

34 *Michigan Law Review*, 331 at 342-343 (1936).

Sitting as a Court of Equity the District Court Properly Disallowed All the Claims of Respondents:

Pepper v. *Litton*, 308 U. S. 295 (1939).

"The Law of Trusts and Trustees" Bogert (1935) Vol. IV, Section 979.

In *Re Perelstine*, (D. C. Pa. 1930) 44 Fed. (2d) 62.

In *Re De Ran*, 260 Fed. 732, 741 (1919).

Dissenting opinion in *U. S.* v. *Chicago, M., S. P. & P. Ry. Co.*, 282 U. S. 342 (1930).

Breach of Trust Charts: I, II and III.

In Response to the Third Question Presented and to Assignments of Error (a), (b), (c), (o) and (p).

II.

A CIRCUIT COURT OF APPEALS IS BOUND TO PROCEED IN ACCORD WITH THE PRINCIPLES OF DUE PROCESS OF LAW AND MAY NOT REVERSE THOSE FINDINGS OF THE TRIAL COURT WHICH WERE NOT CONTESTED NOR ASSIGNED AS ERROR.

When the Circuit Court of Appeals reversed findings of fact of the District Court, which findings had not been contested by respondents in their assignment of errors or otherwise, it violated due process of law because that action denied this petitioner notice, hearing and his day in court.

Fifth Amendment; Constitution of the United States.

Lutcher & Moore Lumber Company v. *Knight*, 217 U. S. 257 (1910).

Saunders v. *Shaw*, 244 U. S. 317 (1917).

Postal Telegraph Cable Co. v. *City of Newport*, 247 U. S. 464 (1918).

Morgan v. *United States*, 304 U. S. 1 (1938).

Morgan v. *United States*, 298 U. S. 468 (1936).

Uncontested Findings of the Trial Court, Appendix "D."

In Response to the Fourth Question Presented and to Assignments of Error (d) and (p).

III.

A COURT OF APPEAL CANNOT OVERRULE THE FINDINGS OF FACT OF THE TRIAL COURT WITHOUT FIRST HAVING ANALYZED THE EVIDENCE UPON WHICH THOSE FINDINGS WERE BASED.

The Circuit Court of Appeals committed error when in violation of Rule 52 of the Rules of Civil Procedure it reversed the findings of fact made by the trial court.

Rule 52 of the Federal Rules of Civil Procedure at 28 U. S. C. A., following Section 723c.

Dooley v. *Pease*, 180 U. S. 126 (1900).

"The Facts of the case as illustrated by respondents admissions of record in the pleadings" at Appendix "E."

In Response to the Fifth Question Presented and to Assignments of Error (l), (m), (n) and (p).

IV.

A CIRCUIT COURT OF APPEALS HAS NO JURISDICTION OF AN APPEAL TAKEN IN VIOLATION OF SECTION 250 OF THE CHANDLER ACT AND PRESENTED WITHOUT A RECORD HAVING BEEN FILED AS PRESCRIBED BY RULE 73(G) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

The Circuit Court of Appeals erred in not dismissing these appeals as requested by petitioner's motions, since appeals taken by the wrong manner do not confer jurisdiction.

Appeal 7060 Should Have Been Dismissed:

Section 250 of the Chandler Act.

Dickinson Industrial Site, Inc. v. *Cowan*, 309 U. S. 382 (1940).

Shulman v. *Wilson-Sheridan Hotel Company*, 301 U. S. 172 (1937).

Appeal 6986 Should Have Been Dismissed:

Rule 73(g), Federal Rules of Civil Procedure.

West v. *Irwin*, (C. C. A. 7) 54 Fed. 419.

The Four Reasons.

In Support of the Assignment of Error Q.

V.

A BANKRUPTCY REORGANIZATION COURT HAS JURISDICTION AND POWER TO DISALLOW FEE AWARDS WHICH HAVE BEEN MADE BY STATE FORECLOSURE COURTS.

The Circuit Court of Appeals erred in ruling that the Federal District Court had no power to readjust or review and disallow the fee awards of State foreclosure court.

Section 258 of the Chandler Act.

Pepper v. *Litton*, 308 U. S. 295, 302-311 (1939).

Butzel v. *Webster Apartments Co.*, 112 F. (2d) 362, 366 (1940).

ARGUMENT.

In Response to the First and Second Questions Presented and to Assignments of Error (f), (g), (h), (j) and (k).

I.

BONDHOLDERS' COMMITTEES, TRUSTEES AND ATTORNEYS BEING FIDUCIARIES ARE BOUND BY THE LAW OF TRUSTS TO EXERCISE UNDIVIDED LOYALTY TO THEIR CESTUIS AND IF IN BREACH OF THAT TRUST DUTY SUCH FIDUCIARIES REPRESENT ADVERSE INTERESTS WITHOUT FULL DISCLOSURE AND CONSENT THEY ARE NOT, UNDER THE CHANDLER ACT, ENTITLED TO ANY ALLOWANCE.

Respondents having committed breaches of trust and having performed no beneficial services which can outweigh the detriment of such conduct were not entitled to fees and the bankruptcy court as a court of equity properly disallowed respondents' claims for fees.

Status as Fiduciaries.

It has been generally held by courts throughout the United States that the status of a bondholders' committee is that of a fiduciary or trustee. Some courts have stated that the duties and obligations of such a committee are of an even higher fiduciary nature than those of directors of corporations[1] while other courts have compared their trust duties to those of promoters of a corporation.[2] Disregarding such comparative analysis however, all courts seem to agree that bondholders' committees and their members are fiduciaries and as such owe a high duty of trusteeship to their *cestuis que* trust—the bondholders.[3] The decisions

1. *Carter* v. *First National Bank of Pocahontas*, 128 Md. 581, 98 A. 77 at 80 (1916).
2. *Parker* v. *New England Oil Corp.*, (D. C. 1924) 4 Fed. (2d) 392.
3. *Monticello Bldg. Corp.* v. *Monticello Investment Co.*, 330 Mo. 1128, 52 S. W. (2d) 545 (1932).
   Bergelt v. *Roberts*, 144 Misc. 832, 258 N. Y. S. 905 (1932) affirmed 236 App. Div. 777, 258 N. Y. S. 1086.
   United Waterworks v. *Omaha Water Co.*, 164 N. Y. 41, 58 N. E. 58 (1900).
   Nichol v. *Sensenbremer*, 220 Wis. 165, 263 N. W. 650 (1935).

of the Supreme Court of Illinois are in accord and treat the committee as a fiduciary holding the legal title for the bondholder.[4] Your Honors have likewise referred to the fiduciary status of bondholders' committees and attorneys as recently as last March in the case of *Dickinson Industrial Site* v. *Cowan*, 309 U. S. 382 at 389 (1940), when the opinion's footnote stated that:

> "The fiduciary status of such claimants is expressly recognized in the Chandler Act, Section 249 provides in part:
>
> "'No compensation or reimbursement shall be allowed to any committee or attorney, or other person acting in the proceedings in a representative or *fiduciary capacity*[5] * * * who * * * has purchased or sold claims or stock * * *,' etc."

The District Court in the present case found it practicable to apply and did apply the Chandler Act to the proceedings at bar.[6] Respondents did not argue against such application of the Act in their briefs in the Circuit Court of Appeals.

The status of the attorney-at-law as a fiduciary is perhaps one of the most ancient. In addition to the recognition given this status by the Chandler Act, as above noted, the canons of professional ethics of the Chicago and American Bar Association emphasize the fiduciary nature of the attorney's status.[7] In the Roman Law the betrayal by an advocate of *his trust* for the benefit of the opposite party (a proevaricatio), was the worst breach of ethics that the lawyer was capable of.[8] Under Illinois law an attorney has always been considered a fiduciary.[8a]

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4. *Cushman* v. *Bonfield*, 139 Ill. 219, 28 N. E. 937 (1891).
   Babcock v. *Chicago Railways Co.*, 325 Ill. 16, 155 N. E. 773 (1927).
5. Italics supplied.
6. PR. 769.
7. Canon 6. "Adverse Influences and Conflicting Interests."
   Canon 37. "Confidences of a client."
   Canon 32. "The Lawyer's Duty in Its Last Analysis."
8. 5 Gluck. Pand. III, cited in Bouvier's at "Advocate" p. 156, Vol. 1, Rawle's Third Revision.

8a. *Goranson* v. *Solomonson*, 304 Ill. App. 80, 25 N. E. (2d) 930, 931-32 (1940).

An indenture or mortgage trustee assumes, as his title indicates, a high fiduciary status and as such he cannot place himself in a position where his interest *might* be antagonistic to the trust; such a course of action being illegal even though the trust res or estate was not actually injured by it.[9]

Thus it appears that all of the respondents, namely, the Bondholder's Committee, the attorneys and the former trustee, are fiduciaries and accountable as such.

Duties as Fiduciaries.

Loyalty to the beneficiary is the one absolute and indispensible characteristic of the fiduciary relationship. From this cornerstone of trust law springs the various other possible breaches of trust of which a fiduciary may be guilty. It is because this duty of loyalty *may* be jeopardized that the representation of possible conflicting interests by a fiduciary is abhorred and declared to be unlawful. Thus a New York Court in a recent case[10] in considering the problem of interlocking directorates has said:

> "* * * their *loyalties*[11] were obviously, in any event, divided. They were seeking to serve two Masters. That road of Service is hard to travel at anytime. It becomes impassable where the two Masters develop interests which conflict with each other."[11a]

This court has likewise spoken upon the subject as relating to bankruptcy attorneys[12] stating that the representation of *possibly* adverse interests tends to "produce the recognized abuses which follow fraud and *disloyalty* by agents and trustees." Although disloyalty may be caused by the self interest of the fiduciary, it can also be the

9. Opinion of Justice Brandeis in *Jackson, Receiver* v. *Smith*, 254 U. S. 586, 588 (1920).

10. Justice Rosenman in *Blaustein* v. *Pan American Co.*, 174 Misc. 601, 21 N. Y. S. (2d) 651 (1940).

11. Italics supplied.

11a. For a list of the "Masters Served" by the Respondents see pages 64-72 of this brief.

12. *Weil* v. *Neary*, 278 U. S. 160 at 173 (1929).

result of acting for a third person.[13] Thus if a fiduciary upon appointment already holds a position in which he has interests possibly hostile to the new trust, he should resign the inconsistent position upon accepting the trust unless a full disclosure of the adverse relationship is made to the beneficiary and his consent to continue in both positions is obtained.[14] If the cestuis are many and their whereabouts are unknown, so that disclosure cannot be made to them directly, then the necessary disclosure must be made to a court. In such a case "a trustee should have no secrets from a court of equity."[15] When the bondholders are widely scattered and are not in a position to individually protect their own interests the members of bondholders' committees and the mortgage trustees should be and are held accountable to the highest standards of "loyalty, fidelity and integrity."[16] This is particularly true with corporate trustees who seek this character of business claiming that they are "specially qualified" and financially responsible.[17] If a person joins with a fiduciary in a transaction in which he has reason to believe the fiduciary has

13. "The Law of Trusts and Trustees" Bogert (1935), Vol. 3, Sec. 543, page 1730:

"Service of Third Persons.

"The trustee is guilty of a breach of his duty of loyalty to the *cestui* not only when he permits his own selfish interest to intervene in the trust administration, but also where he acts as a representative for others than the *cestui* and thus allows the interests of third persons to be opposed to those of the beneficiary. He can be disloyal to his *cestui* just as much by seeking the advantage of a third person, as by looking to his own private aggrandizement. * * *"

14. *Isenberg* v. *Trent Trust Co.*, (C. C. A. 2d) 31 F. (2d) 553.

15. The court's complete quotation is:

"They may be performing their duties for the bondholders' welfare, but they are fiduciaries, and as such must account to equity. The assumption of a trust relationship implies a willingness and obligation to lay bare the stewardship * * * as regards the trust, a trustee should have no secrets from a court of equity." *Bergelt* v. *Roberts*, 144 Mis. 832, 258 N. Y. S. 905 at 910, (1932); affirmed 236 App. Div. 777, 258, N. Y. S. 1086.

16. *Monticello Bldg. Corp.* v. *Monticello Investment Co.*, 330 Mo. 1128, 525 S. W. (2d) 545 (1932).

17. *Harrison* v. *First Wisconsin Trust Co.*, 191 Wis. 23; 209 N. W. 945, 947.

In Re Clark's Will, 242 N. Y. S. 210.

Busby v. *First National Bank of Chicago*, 288 Ill. App. 500 at 520, 6 N. E. (2d) 451 at 459 (1937).

a conflict of interest, such person is jointly and severally liable with the fiduciary for any breach of trust which may result.[17a]

The Law of Illinois.

In Illinois the law relating to fiduciaries is in accord with the foregoing statements. Four cases[18] plainly illustrate the attitude of the Courts of Illinois and their application of firmly established rules relating to fiduciaries. The holdings of these cases may be summarized as follows:

(1) A Fiduciary is liable for failure to collect debts due the estate and must make the estate whole plus paying compound interest.[19]

(2) A Fiduciary who is guilty of a breach of his trust is not entitled to fees.[20]

(3) A Fiduciary owes the duty of making a full and complete disclosure to his beneficiary.[21]

(4) A Fiduciary acting also as an agent for an adverse third party breaches his trust and such a transaction is voidable regardless of whether or not the beneficiary was injured by the act and good faith of the fiduciary in the absence of a full disclosure is no defense.[21]

The Committee's Failure to Perform Its Duties as a Fiduciary.

The Granada Bondholders' Committee felt it had no duty to the bondholders, and translated that feeling into action. Its first *acts* of loyalty as shown by the testimony of respondents' own witnesses were always to third persons. It

17a. *Jackson* v. *Smith*, 254 U. S. 586, 589 (1920).
McGruder v. *Drury*, 235 U. S. 106 (1914).

18. *Nonnast* v. *Northern Trust Co.*, 374 Ill. 248, 29 N. E. (2d) 251 (1940).
Metcalf v. *Metcalf*, 286 Ill. App. 10, 2 N. E. (2d) 760, (1936).
Lerk v. *McCabe*, 349 Ill. 348, 182 N. E. 388, (1932).
Chicago Title & Trust Co. v. *Schwartz*, 339 Ill. 184, 171 N. E. 169, (1930).

19. *Nonnast* v. *Northern Trust Co.*, 374 Ill. 248, (1940).

20. *Edwards* v. *Lane*, 331 Ill. 442, 451, (1928).
Nonast v. *Northern Trust Co.*, 374 Ill. 248, (1940).

21. *Metcalf* v. *Metcalf*, 286 Ill. App. 10, 2 N. E. (2d) 760, (1936).
Lerk v. *McCabe*, 349 Ill. 348, 182 N. E. 388, (1932).
Chicago Title & Trust Co. v. *Schwartz*, 339 Ill. 184, 171 N. E. 169, (1930).

continually and persistently represented and was dominated by third parties whose interests were adverse to the interests of the bondholders. Its personnel and membership was chosen by City National for these illegal purposes. The members of the committee represented conflicting and adverse interests. These members were:

(1) *William G. Sturm*[22] who as an employee of City National[23] and formerly of the Central Trust Company[24] admitted that his status was "difficult to explain"[25] and said that the committee did "not concern itself very much with the operation" of the Granada;[26] that the committee and City National "were largely one and the same thing";[27] that "the committee cooperated with the trustee" in taking the bondholders' money to pay for the *Tuttle v. Harris* litigation;[28] that he was one of the committee and was in charge of the reorganization department at the trustee bank;[29] that "the bank furnished the committee" and then "became the depositary" and "*if there were any fees allowed the committee they go to the bank*" (City National);[30] that after City National formed the committee, the committee then filed a petition in the state court to have City National appointed as trustee;[31] that if his superior at the bank, a Mr. Leonard, had told him "to go to the committee and have City National Bank put in as trustee in that trust deed I would go and do it";[32] that the committee personnel for the hotels Arlington and Lincoln Park Manor "is composed entirely of people in the City National Bank";[33] that the committee did "not object to

22. PR. 201.
23. Respondent Trustee, PR. 201.
24. PR. 213.
25. PR. 202.
26. PR. 203.
27. PR. 205.
28. PR. 205-206. See Appendix "A" at page 93 below.
29. PR. 208.
30. PR. 210-211 and PR. 470.
31. PR. 212.
32. PR. 212.
33. PR. 213.

lawyer's fees;[34] that he didn't know the value of the property;[35] that he didn't know what the tax situation was from year to year;[36] that he knew the prospectus issued by the Cody Trust Company told the bondholders the furniture at the Granada was paid for, but he made no effort to have Cody Trust or its officers pay for it; the Committee borrowed money on a receiver's certificate to buy the furniture and didn't know if the furniture had been paid for twice;[37] that when the committee made an important decision only two or three members attended the committee meeting;[38] that the committee had no other office space except that of the City National Bank, which it occupied since its organization in April 1933;[39] that he executed the petition for charges by the committee,[40] but wasn't sure whether the items represented only transactions prior to the Federal reorganization proceedings or not, but thought that they did.[41]

(2) *Charles S. Tuttle* testified that he was a member of the Granada Bondholders' Committee,[42] that he was "a trust officer of City National", had "been there since the bank was organized on October 5, 1932", that prior to that he was Vice-President of the Central Trust Company which later consolidated with the Chicago Trust Company,[43] that he later joined City National,[44] that the Granada committee like "other committees in the bank" was formed by itself, "the men themselves got together and organized a committee",[45] that "I don't know that

34. PR. 214 and PR. 229.
35. PR. 220.
36. PR. 220.
37. PR. 225.
38. PR. 229-230.
39. PR. 469.
40. PR. 468.
41. PR. 470.
42. PR. 318.
43. Underwriter of Granada Bond issue. PR. 201.
44. PR. 317.
45. PR. 318.

there has been a petition filed here asking for expenses and fees of the committee in this proceeding."[46]

(3) *Lewis Riddle* did not testify but his affiliations were aptly described by other of respondents' witnesses. William Sturm testified that Riddle was a member of the Granada Bondholders' Committee,[47] that he had formerly been with the Cody Trust Company,[48] that many of the committee's earlier meetings had been held in Mr. Riddle's office at the Cody Trust Company,[49] that sixty per cent of the Granada Bond issue had been underwritten by the Cody Trust Company,[50] that "the bank (City National) appointed Mr. Riddle on the committee,"[51] that "Cody Trust or some people associated with it" controlled the Granada corporation stock in 1933,[52] that the committee made no effort to have the officers of Cody Trust Company pay for the receiver's certificate,[53] that *Mr. Riddle and Mr. Hiram S. Cody were on the indemnity bond together and that funds were taken from the Granada trust to pay off their obligations.*[54] Mr. O'Brien of the firm which acted as counsel for the committee stated in his testimony that "Lewis Riddle had given the surety company an indemnity agreement,"[55] and a receiver's certificate had been issued to pay that claim,[56] and that his firm had been paid $2,000 for counsel fees for conducting the litigation,[57] that the committee was set up with the cooperation of the Cody Trust Company,[58] that 1,000 shares of the common stock were then

46. PR. 319-320.
47. PR. 201.
48. PR. 201.
49. PR. 201.
50. PR. 201.
51. PR. 212.
52. PR. 220.
53. PR. 225.
54. PR. 229.
55. PR. 476.
56. PR. 479.
57. PR. 479.
58. PR. 487.

controlled by the Cody Trust Company,[59] that Cody Trust Company and Chicago Trust Company had advertised in their prospectus to the bondholders that the Granada furniture was part of the bondholders' security.[60]

(4) *Albert Peterson,* another member of the committee had also been with the Cody Trust Company.[61]

(5) *E. A. Kilmer,* the fifth member of the committee, was in the investment business in Indiana;[62] he had distributed a portion of the 60 per cent of the Granada Bonds which were probably the ones underwritten by the Cody Trust.[63]

(6) *The Committee Secretary,*[64] Witness Johnson, testified that he was employed in City National's Reorganization Division and had been with Central Republic,[65] that he is "Secretary of the various bondholders' committees for the issues underwritten by Central Republic and predecessor institutions. That includes the Granada issue,"[66] that the Granada Committee "was set up in April 1933" and a letter was sent out in May of 1933, asking for the deposit of Granada bonds,[67] that the bank's reorganization division made "recommendations to the committee",[68] that "I am secretary of the committee on Granada Hotel and for all of the other committees and all of the other reorganizations",[69] that "By 'we' I refer to the bondholders' committee and the Reorganization Division" of the bank,[70] that "we had com-

59. PR. 488.
60. PR. 499, Prospectus, Exhibit "V" at PR. 516.
61. PR. 201.
62. PR. 201.
63. PR. 203.
64. PR. 421-422.
65. PR. 421.
65. PR. 421-422.
66. PR. 422.
67. PR. 422.
68. PR. 422-423.
69. PR. 431.
70. PR. 431.

mittees on about 375 of the 400 issues that we handled",[71] that the comittee held only four formal meetings as shown by the committee's minute book,[72] that "the officers of the old Central Republic Bank and Trust Company employed the attorneys now representing the City National Bank in this proceeding. The committee had nothing to do with it. • • • *The committee had nothing to do with hiring those lawyers* • • •. The appeal in the Tuttle case was actually in the name of the committee • • • The Bank employed the attorneys in this case that went to the Supreme Court;"[73] that counsel advised the Committee to have the trustee intervene, and the Committee cooperated "in any way necessary;"[74] and that "I suppose you would call the Bondholders' Committees at the Bank self appointed Committees."[75]

Thus from the testimony of two of the committee members, the committee's secretary and its counsel we see that the committee did not hire the lawyers that represented the committee, that City National and the committee were one and the same thing, that the committee consisted of nominees and employees of City National, that this same condition prevailed with regard to the Arlington and Lincoln Park Manor Hotels to whom Granada sold heat and refrigeration, that the committee did not object to lawyers fees, that three of the members of the committee were connected with the underwriters[76] which had made false statements in the bondholders prospectus and which also owned common stock[76] in the debtor cor-

71. PR. 434.
72. PR. 435.
73. PR. 437. See Appendix "A" at page 93 below.
74. PR. 436.
75. PR. 437.
76. Section 158 of the Chandler Act expressly recognizes that stockholders and underwriters' employees and agents are not disinterested persons:

"A person shall not be deemed disinterested for the purposes of Section 156 and Section 157 of this Act, if—
(1) he is a creditor or stockholder of the debtor: or • • •
(3) he is or was within two years prior to the sale of the

poration, that only two or three members of the committee attended meetings, that one of the committee members didn't know that the committee had petitioned the court for fees, that if any fees were allowed to the committee that such fees would go to City National and not to the committee,[77] that one of the committee members, a Mr. Riddle, had signed an indemnity bond and that funds were taken from the debtor's estate to pay off that private obligation, that the committee used to meet in Mr. Riddle's office at the Cody Trust Company, that the City National Bank appointed the committee and then the committee petitioned for and secured the appointment of City National as depositary and trustee.

Petitioner submits that the committee served conflicting interests, did not take its job seriously, did not regard itself as a fiduciary, was under the domination and control of other private interests, that the presence upon the *bondholders' committee* of three representatives of the principal *stockholder* was a breach of trust and that the committee did nothing to benefit the estate of the debtor but was a mere tool for guilty parties intent upon hiding from the bondholders (the committee's *cestuis que* trust) the true facts of the situation which facts involved many breaches of trust and dishonest acts by prior fiduciaries against whom no remedy for the benefit of the bondholders was ever sought. The Chandler Act was adopted among other reasons in order to prevent breaches of trust

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filing of the petition, a director, officer or employe of the debtor or any such underwriter, or an attorney for the debtor or such underwriter; or

(4) it appears that he has, by reason of any other direct or indirect relationship to, connection with, or interest in the debtor or such underwriter, or for any reason an interest materially adverse to the interests of any class of creditors or stockholders."

77. Under such circumstances the claim should be disallowed on the authority of *In Re National Lock Co.*, (C. C. A. 7, 1936) 82 F. (2d) 600 at 603 and *In Re Consolidation Coal Co.*, 14 F. Supp. 845 at 855 (1936).

An additional reason why fees should be denied the Committee is that by Section 4, Article II of the Deposit Agreement (PR. 21) it is provided that *"The Committee shall serve without compensation. * * *"*

by such committees as the one now at bar. At least one court has spoken eloquently upon this subject.[78]

The District Court in the case at bar also spoke eloquently upon this subject,—and correctly. So correctly that the findings of the court as below quoted *were not assigned as error* by respondents. These findings thus admitted are in part as follows:

(1) "A prospectus was issued by Chicago Trust Company, and a separate one by Cody Trust Company. Both of these documents are in the record; the repeat the announcement made to the bondholders in 1924, that the security includes the furniture and fixtures at Granada Hotel."[79]

(2) "Having made the 1928 issue in this manner, the bankers used some of it to retire the 1924 issue, but did not pay off the furniture indebtedness."[80]

(3) "This Granada Apartments, Inc., from its beginning was officered by employees of Cody Trust Company, and was wholly under its control."[81]

(4) "When Central Republic * * * went into receivership, an order was secured on motion of Granada Bondholders' Committee to appoint City National * * * as * * * successor trustee."[82]

(5) "It had been organized in April 1933, by and among minor officers, employees and nominees of City National Bank and Trust Company."[83]

(6) "The committee when formed by City National included representation from Cody Trust Company.

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78. In *Steere* v. *Baldwin Locomotive Works*, 98 Fed. (2d) 889 at 892 (C. C. A. 3, 1938) the court said:

"The history of corporate reorganizations before the adoption of Section 77B reveals too many instances of committees, often self constituted, founded ostensibly to protect security holders, but actually serving their own or other private interests at the expense of those they were appointed to serve. One of the purposes of the Bankruptcy Act as amended is to assure such security holders that, so far as the court is able to ascertain after hearing, any committee permitted to intervene in their behalf is composed of able and honest individuals who are free of conflicting interests and reasonably representative, and may, therefore, reasonably be expected adequately to protect their interests."

79. Paragraph 16 at PR. 774 and at paragraph 26, PR. 778.

80. Paragraph 22 at PR. 776.

81. Paragraph 23 at PR. 776-777.

82. Paragraph 33 at PR. 780-781.

83. Paragraph 34 at PR. 781.

> * * * The minutes produced in this court to show what action was taken by the Granada Committee, do not show that any constructive action was ever taken looking toward a reorganization of the Granada property."[84]

Other findings by the trial court to which respondents did assign error were that "This bondholders' committee had no will of its own",[85] that "City National and its alter ego, Granada Bondholders' Committee entered into possession and engaged in various dilatory litigation, in Superior Court, County Court, this Court and Courts of Review (269 Ill. App. 489), (297 U. S. 225)"[85] that "The Committee has been at all times dominated and controlled by City National",[86] that "In the minds of City National witnesses there was no distinction between the Committee and the Reorganization Division of the City National, and their witnesses could not distinguish the expenditures by the committee from expenditures by City National as Trustee. * * * The same individuals who used their personal names to persuade the public to deposit bonds, were the persons who handled the business for City National after it had become depositary, or fiduciary in some other capacity. The trust relationship was treated as a business to be obtained and conducted like any other commercial operation obtained by ingenious form of advertising,"[87] that "If the properties[88] were not to be operated as a single unit but as antagonistic units, it was highly improper for the committee or City National or counsel to continue to represent more than one of them. *A continuance of said representation at all times was a breach of trust which alone disentitles counsel or committee or City National to any compensation for services to*

84. Paragraph 40 at PR. 783.
85. Paragraph 34 at PR. 781. See page 93 below.
86. Paragraph 40 at PR. 783.
87. Paragraph 41 at PR. 783-784.
88. Granada, Arlington, Lincoln Park Manor.

Granada."[89] That "Neither the attorneys, nor the committees which have an interlocking personnel, nor the City National as Trustee, could rightfully continue a common relationship to all these properties once this adverse interest was disclosed."[90]. The court also found:[91]

> "The record does not disclose that any information ever was given to the bondholders or creditors of Granada, about the receiver's certificate, or any moneys used in furniture litigation; or that the City National as Trustee and the Bondholders' Committee and the Attorneys, occupy similar relationships to the Arlington property, and to Lincoln Park Manor property; nor does it appear that any bondholder or creditor knew that the Granada Bondholders' Committee was merely a business getting device for City National without a will of its own; nor does the record show that any bondholder or creditor of Granada knew that City National and the Bondholders' Committee were employing said attorneys who had formerly represented adverse interests and currently were representing adverse interests. Continuously since the Committee was organized in 1933 these adverse situations of interests have existed and were fully known to the Committee, to the City National, and to said counsel, all of whom have committed breaches of trust in failure to make full disclosure and failure to resign from all but one of said relationships. *The breach of confidence thus in evidence is so fundamental as to destroy all right for any of these parties to have compensation or reimbursement for any services.*"[92]

Petitioner submits that by the testimony of respondents' own witnesses these contested findings of the trial court are amply and substantially supported by the evidence and further that these contested findings are additionally supported by those uncontested findings of the court which were admitted by respondents' failure to assign as error in the Circuit Court of Appeals.

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89. Paragraph 42 at PR. 784.
90. Paragraph 49 at PR. 787.
91. Paragraph 50, PR. 788.
92. Italics supplied.

The Trustee's Failure to Perform Its Duties as a Fiduciary.

The breaches of trust committed by City National Bank and Trust Company as former trustee were many. While trustee of Granada, they were also trustee of nearby hotels which contracted with Granada for services. As trustee of one it "bargained" with itself as trustee of the other. All of these facts stand admitted in the record by the testimony of City National's own witnesses. Not only did City National represent conflicting interests without disclosure and consent, but they failed to perform their duties to Granada even when a conflicting interest was not present to prevent them from so doing. The testimony of City National's witnesses tells the story in a rather complete manner as follows:

(1) Witness *Hubbart* described himself as City National's agent in charge of Granada[95] and said that "at the same time I was operating the Arlington property;"[96] that "during the period I have operated this hotel (Granada) I collected from the Arlington property across the street for heat and hot water and refrigerator service $600 a month. I did have something to do with determining that sum of money. I objected to it from a fair standpoint when I found the Arlington paid as much as they did,"[97] that "the amount of $4,080 of accumulation for 1933 was not paid" (from Arlington to Granada) "they refused to pay"[98] that "Lincoln Park Manor is a trust with the City National covering Lincoln Park Manor Hotel. * * * There is also a trust in reference to the Arlington Hotel."[99] In reference to the Granada and Arlington Bondholders' Committee's membership, Mr. Hubbart said, "* * * some were on both committees," and then

95. PR. 173.
96. PR. 177 and PR. 181.
97. PR. 177.
98. PR. 181.
99. PR. 400.

added, "Not all of the members of the committee were officers of the bank."[100] At the beginning of his testimony this witness had stated that he did not make any effort to get any permanent tenant for the ballroom space in the debtor's lobby.[101]

(2) Witness *Bickel* said that he was a trust officer of the City National, had been connected with it since its organization in 1932 and prior to that time had been with the Central Republic Trust Company.[102] He further testified that "I knew about this reduction of charge for the services to the Arlington from $940 to $600.[103] * * * at that time the Central Republic Trust Company was trustee under both mortgages."[104] He next indicated that so far as this trust was concerned there was no difference between City National and Central Republic by saying, "The City National Bank and Trust Company of Chicago began furnishing service for the Central Republic at the time the Central Republic went into possession.[105] *When the City National Bank took over this property formally on the record, in January 1935, the same personnel took it, doing the same thing.* We knew that the accounts of the Central Republic Trust, which was formerly *on record* were correct. *I don't know what more checking we could do than prepare them.*"[106] The witness then said, "I am not a member of the Bondholders Committee on the Granada. I was on the other two.[107] *My company* was trustee in all three,"[108] that "I know something about the item of $4,080.00 on the books of the Granada Hotel which was *charged off* at the end of 1933. * * * I think it was done

100. PR. 178-179.
101. PR. 176.
102. PR. 183.
103. PR. 183.
104. PR. 184.
105. PR. 195.
106. PR. 196.
107. The Arlington and Lincoln Park Manor.
108. PR. 184.

at the direction of the corporation, which at that time was subject to Edward Hall's direction. * * * At the time the bank took possession of the Granada, he was retained as agent for the Trustee"[109] and that "at the time we took possession as Trustee, the Chicago Title & Trust Company was not operating the property directly. They had stated that they would prefer to, but at that time *we were operating it through Mr. Hall.*"[110]

(3) *William G. Sturm* stated that he was a trust officer of City National and that he had contact with the Granada property,[111] that "I did know that this Granada hotel furnishes hot and cold water, heat and refrigeration to two other hotels",[112] that "My best recollection is the Arlington and Lincoln Park Manor, that the committee personnel is composed entirely of people in the City National Bank",[112] that he had been "in the real estate loan department of Central Trust Company,[112] that he hadn't checked the taxes on Granada,[113] that he didn't know how much it was worth within $50,000.[114]

(4) Witness *Leonard,* testified that he was "Vice-President in charge of the Trust Department of City National",[115] that "*From the time the City National was organized down to the time that is known as the termination date, it serviced Central Republic Trust Company so far as trust service was concerned;* City National took over the Granada business. I have known about this situation generally since the Central Republic went on the record in this matter,"[116] that "The trustee was appointed on a petition filed by the Bondholders' Committee * * * *The*

109. PR. 333.
110. PR. 417.
111. PR. 201.
112. PR. 213.
113. PR. 220.
114. PR. 220.
115. PR. 230.
116. PR. 230-231.

two active members of that committee are *junior* employees of the City National."[117]

(5) *Philip R. Clarke* said, "I am the President of the City National Bank and Trust Company,"[118] that "I have heard that a previous case dealing with Granada was carried to the Supreme Court of the United States *by the committee who were officers of my bank,*"[119] and that "Nothing pertaining to the Granada matter has ever been before the Board of Directors that I recollect."[119]

(6) Witness *McDonnell* was an expert called by City National who said he was "General Manager of the Hotel Windemere."[120] He further stated as follows:

> "The solarium and writing room in the Granada could be utilized for commercial purposes with the qualifications that I made. That is that the right type of person and a going enterprise"[121] and that "I think I would endeavor to make some use of that space to bring in some money."[122]

(7) Witness *Hall*, whose testimony is perhaps more interesting and informative than that of any other of City National's witnesses, said: "I * * * am familiar with the Granada, Arlington and Lincoln Park Manor properties * * *. In December, 1933, Chicago Title and Trust Company took possession of the Granada, as receiver, and I was agent in charge for the receiver."[123] "Around that time I had conferences with Mr. Hertzman and others of City National, relative to charges being made for heat, refrigeration and other services from Granada to Arlington. At the conclusion of those discussions an instrument was prepared * * *"[123] "*The instrument was prepared*

117. PR. 239.
118. PR. 335.
119. PR. 336.
120. PR. 378.
121. PR. 384-385.
122. PR. 385.
123. PR. 402.

by you[124] at my suggestion, I think. That was on or about the date it bears, January 4, 1934." [125] *"I was operating both of the properties at that time*[126] on behalf of the trustee of the Arlington and on behalf of the receiver of the Granada, who was Chicago Title & Trust Company. I was doing the actual work of operating. The receiver did not operate at all * * *. I have been in there since December of 1931." [127] "In addition to myself we had the Manager; aside from the Manager there were lawyers. *Aside from the lawyers and myself, nobody did anything. That existed in reference to the Granada until the matter came into the Federal Court in May of 1937."* [128] "So that this arrangement of $600 a month for 1933 was simply *an evening up measure* * * *." [128] "The $900 a month was collected for the entire calendar year 1931, and the calendar year 1932. In 1933 *we adjusted matters* and collected $600 for the entire service. We began that in January 1933. Pending the consummation of the agreement, we charged the building with the full amount and collected each month $600 *and let the balance ride. That was written off at the end of the year by a journal entry."* [129] "I traded that contract[130] on behalf of the Arlington. I was in charge of that building as well. It was not in the hands of a receiver. No one else than myself tried to get as much money as he could for one side and as little for the other side." [131] "I never sought * * * the consent of anyone to utilize the space in the Granada for commercial purposes and for dining room purposes." [132] "It is quite true

124. Mr. Vincent O'Brien of Defrees, Buckingham, Jones & Hoffman, counsel for the Granada Bondholders Committee and City National as Trustee of Granada.

125. PR. 402.

126. When the new "contract" for services was prepared.

127. PR. 403.

128. PR. 404.

129. PR. 405-406

130. The new contract which reduced Arlington payments from $900 to $600 per month.

131. PR. 406.

132. PR. 408.

that *there wasn't any other reason for that receivership except to use it as a weapon in warfare with Pick.*[133] In 1934 the Chicago Title and Trust Company was directed to actually take possession because Mr. O'Brien,[134] myself and the trustee thought that the best move would be to make *a conventional receivership out of it*[135] and this was done." [136]

(8) Witness *Johnson* also was an employee of City National and had formerly been employed by the Central Republic Trust Company,[137] and testified that "we were also very active on the Arlington (hotel) situation".[138]

(9) Witness *Hertzman* said he "was associated with Central Republic Trust Company in 1933. I am at present with the City National." [139] He testified that he had written a letter to City National urging a reduction in the amount of the payments made by the Arlington Hotel to the Granada and "I understand that as a result of this letter *they made a charge-off in January of 1934 of $4,080.* I understand that it was for billing that had been done and put on the books in 1933." [140]

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133. Albert Pick & Company, the furniture creditor.

134. Mr. Vincent O'Brien of Defrees, Buckingham, Jones and Hoffman.

135. Since this evidence shows that the only reason for the state court receivership was to delay and defraud a creditor, *i. e.*, Albert Pick & Company, counsel as a fiduciary cannot, under well established Illinois law claim compensation for services, nor can the receiver. In *French* v. *Commercial National Bank*, 199 Ill. 213, 65 N. E. 252 (1902) the court said:

> "The complaint of the appellant that he was allowed no compensation for his services as 'trustee' as he styles himself * * * hardly demands discussion. The law does not award compensation for the doing of illegal acts, and does not recognize that anyone is entitled to recompense for services rendered in furtherance of a conspiracy to wrong and defraud creditors."

Section 4 of Chapter 59, Illinois Revised States, 1939 provides:

> "Every * * * charge upon any estate real or personal, or right or thing in action * * * *made with intent to disturb, delay, hinder or defraud creditors* or other persons and every bond or other evidence of debt given, suit commenced, decree or judgment suffered, with like intent, shall be void as against such creditors, purchasers and other persons."

136. PR 411.

137. PR. 421.

138. PR. 429.

139. PR. 295.

140. PR. 304.

(10) Witness *O'Brien,* a member of the firm which represented the trustee and the Bondholders' Committee,[141] next testified. He admitted that his firm, Defrees, Buckingham, Jones & Hoffman had formerly represented "its predecessor in trust, Central Republic Trust Company[142] * * *" and that when Central Republic got its discharge and release and City National was appointed in its stead "we later appeared in court on the presentation by the receiver of the account of the Central Republic Trust Company."[143] He did not indicate whether he appeared as counsel for City National and the committee or for the Central Republic who received a full and complete discharge and release from all liability. He testified that for defeating the Federal Bankruptcy Court's jurisdiction "we were paid by City National Bank and Trust Company the sum of $3500 on April 13, 1936 * * *."[144] He then tried to explain what had happened to $120,000 worth of furniture which had been at the Granada. As counsel for the trustee he should have known. He said, "I have a pretty good notion of what became of the $120,000 worth of furniture. The inventory made in 1933 which fixed the value of the furniture at the Granada at $40,000 after having spent $35,000 in replacing it, depreciated the value of the stuff in the place at that time, as those appraisers saw it, about forty-three or forty-four thousand in 1933"[145] which meant he didn't know or didn't want to tell. Speaking of the foreclosure in the state court, he said, "There is no question but what we spent six and a half years, from June 1930 to December 1936."[146]

In view of this testimony by City National's own witnesses, it is not surprising that the trial court made cer-

141. PR. 473.
142. PR. 473.
143. PR. 482.
144. PR. 484. See page 93 below.
145. PR. 497.
146. PR. 502.

tain findings which respondent City National did not have the temerity to assign as error. These findings which were admitted by the foregoing testimony and which stand upon the record as uncontested by any respondent, are as follows:

(1) "Albert Pick & Company of Chicago supplied the furniture on open account and chattel mortgage * * * what became of that much furniture is not shown by the record."[147]

(2) "* * * a copy of the prospectus * * * specifically states that the furniture and fixtures at Granada are a part of the security for the bondholders' money * * *."[148]

(3) "It does not appear that City National or anyone tried at any time to have the Codys or the Cody Trust Company or its officials, or the Chicago Trust Company, or its officials, or any successors or receivers for them, or Wenstrand and the other indemnitors on the court bonds that were released by buying the Pick furniture the second time with bondholders' money, and buying new furniture from La Salle Furniture and Supply Company when Pick & Company took away part of the furniture, to have any of these persons perform their promises and duty to the Granada property and the Granada Bondholders."[150]

(4) "At that time (March of 1934) until the Central Republic Trust Company went into receivership near the end of 1934, the City National Bank and Trust Company furnished the personnel and service on the trusts including the Granada matter, as to which the Central Republic Trust Company was nominal trustee."[151]

(5) "It is admitted by the pleadings and in evidence here that Mr. Hall was so retained to represent and keep informed the Cody Trust Company and their successors in interest."[152]

(6) "The Committee when formed by City Na-

147. PR. 773, paragraph 14.
148. Paragraph 11, PR. 772 and Paragraph 26 at PR. 778.
150. Paragraph 36, PR. 781-782.
151. Paragraph 33, PR. 780-781.
152. Paragraph 35, PR. 781.

tional included representation from Cody Trust Company."[153]

(7) "City National was trustee of both Arlington and Lincoln Park Manor."[154]

(8) "Neither the attorneys nor the Bondholders' Committee, nor the City National presented any plan at any time to the bondholders or anyone else for the joint operation of the three properties * * *."[155] From that time (May of 1929) until now these properties were bondholders equities. *No person in a confidential relationship to one of these properties could rightfully represent another.*"[156]

(9) "*The court* does not intend to minimize, but *does recognize the many wrongs and injustices to the debtor estate shown by this record which have been committed by City National*, by the Bondholders' Committee and by their attorneys and counsel; the court finds that *all equities are with the Court Trustee*; but the court believes that justice to all concerned will be rendered more speedily if the opposing claims and contentions are set off against each other * * *."[157]

In the last paragraph of the court's findings above quoted, the trial court refused the fee claim of City National and of the other respondents and yet respondents at no time contested this part of the finding by assigning error to it.[158] Thus it stands admitted. The preceding findings, also above quoted, and also not contested, amply support the conclusion there reached. It is therefore difficult for this petitioner to realize upon what basis or proposition of law City National proceeded when it suddenly claimed in the Circuit Court of Appeals that the District Court had erred in disallowing its claim for fees.

The witnesses of City National openly admitted the facts which constituted the many breaches of trust. The trial court found City National guilty of breaches of trust and

153. Paragraph 40, PR. 783.
154. Paragraph 39, PR. 783.
155. Granada, Arlington and Lincoln Park Manor.
156. Paragraph 49, PR. 787-788.
157. Paragraph 57, PR. 790-791.
158. Respondents' assignment of errors is at PR. 817-832.

not entitled to fees. City National did not assign error to those portions of Findings 1 to 9 above quoted.

Errors were assigned to other findings of the District Court however. These findings were, nevertheless, supported by substantial evidence included within the admissions made by City National's witnesses. These additional findings of the trial court were:

(1) "Instead of reorganizing three properties as a unit of resigning from two of the trusts, City National officials at the beginning of 1934 consummated a course of action which had been planned for a year by charging off a balance of Four Thousand Eighty Dollars ($4,080) that had been regularly billed to Arlington, and placed upon the Granada books of account, for the heat, hot and cold water and refrigeration services furnished by Granada during the year 1933. The charge (of which said sum is the unpaid balance) was made pursuant to the Barton Contract."[159]

(2) "This deliberate purpose to favor the Arlington as against Granada by the reduction in charge, forcibly made, is an additional breach of trust * * *."[160]

(3) "The reasonable value of the heat, hot and cold water and refrigeration service which have been rendered to the Arlington Hotel property until there was a wilful cut-off of pipes by respondents * * * is found to be at the rate of one thousand dollars ($1,000) per month."[161]

(4) "The purpose and effect of this attempted reduction was to enable the Arlington between 1933 and the present time to pay off entirely its taxes, and to leave the Granada with a tax bill of about Sixty Thousand Dollars ($60,000) when these proceedings were begun. At the same time that this was done, the former rate of compensation paid by Lincoln Park

159. Paragraph 42 at PR. 784. This finding was supported by the following of respondent's witnesses:
(1) I. Ray Hubbart at PR. 181;
(2) John J. Bickel, Jr. at PR. 333;
(3) Edward Hall at PR. 402, PR. 404 and PR. 405-406.

160. Paragraph 43 at PR. 785.

161. Paragraph 53 at PR. 788-789. This finding is substantiated by the testimony of William H. Schott, PR. 250-257 and of Walt Reynolds Loveless, PR. 443-450.

Manor was continued and collected without change by respondents and City National as its trustee; and is being paid today by a lessee of that hotel."[162]

(5) "*From October, 1932, the City National assumed and exercised real control over Granada affairs.*"[163]

(6) "If the properties were not to be operated as a single unit but as antagonistic units, it was highly improper for the committee or City National or counsel to continue to represent more than one of them. A continuance of said representation at all times was a breach of trust which alone disentitles counsel or committee or City National to any compensation for services to Granada."[164]

One of respondents' witnesses[165] testified that, "aside from the lawyers and myself, nobody did anything. That existed in reference to the Granada until the matter came into the Federal Court in May of 1937."[166] We have already seen what this witness did.[167] Let us now see what the lawyers did.

The Lawyers' Failure to Perform Their Duties as Fiduciaries.

Defrees, Buckingham, Jones and Hoffman, who style themselves as "counsel for City National * * *, as trustee * * *, and also for the first mortgage bondholders' committee[168] * * *" requested "a present net allowance of $24,500."[169] This "firm" was represented throughout the proceedings in all courts by Mr. Vincent O'Brien,

162. Paragraph 43 at PR. 784-785. This finding is fully supported by the evidence as follows:
(1) Arlington tax situation, PR. 186 and PR. 180;
(2) Lincoln Park Manor tax situation, PR. 219;
(3) Granada tax situation, PR. 190.

163. Paragraph 33 at PR. 780. This finding is supported by the testimony of respondents witnesses at PR. 195-196, PR. 201, PR. 211, PR. 230-231, PR. 422.

164. Paragraph 42, PR. 784.

165. Edward Hall.

166. PR. 404.

167. Pages 38 to 40, this brief.

168. PR. 473.

169. PR. 496.

who was also their only witness.[170] Mr. O'Brien did not tell the full story (it may be pieced together only from the testimony of the other witnesses), but the installment which be contributed to the serial (even now incomplete) was an interesting chapter. It showed employment about Granada affairs for a period of thirteen years,[171]—a length of time which represents a large proportion of the average lawyer's professional career—a number of years which carried his firm back to 1924 when credulous Americans who believed in underwriter's statements first purchased the Granada bonds.

Mr. O'Brien admitted that "prior to the appointment of the City National • • • as successor trustee, we represented its predecessor in trust, Central Republic Trust Company, formerly known as Central Republic Bank and Trust Company."[172] He also testified that "we later appeared in court on the presentation by the receiver of the account of the Central Republic Trust Company • • •"[173] It was at this time that Central Republic was "discharged from any and all liability" for its conduct in the Granada matter[174] and yet the bondholders and its committee and the new trustee were there represented by the lawyers of the accounting fiduciary who received its discharge. Small wonder that no one objected to the discharge, release or accounts of Central Republic. No one was in court whose interest was not akin to that of the departing trustee; its lawyers were the lawyers of the only persons qualified to object. But this firm's representation of adverse and conflicting interests does not stop here. This was only an introduction,—a beginning. Even Mr. O'Brien's story does not stop here, for he says "I think we were acting for the Chicago

170. Testimony of Mr. O'Brien PR. 473-504.

171. PR. 496.

172. PR. 473.

173. PR. 482.

174. PR. 958, where the opinion of the Circuit Court of Appeals states this. Respondents admit that this is correct at PR 998 when they say that in the opinion *"no points have been overlooked or misapprehended."*

Trust Company as its general counsel."[176] Chicago Trust Company with Cody Trust Company were the underwriters of the two Granada bond issues; it was the Chicago Trust Company, this firm's client, who had issued a fraudulent prospectus[177] which stated that the Granada furniture was additional security for the bondholders when as a matter of fact and truth, the furniture was not owned by Granada, but had been obtained on a chattel mortgage. Mr. O'Brien testified to this for he said, "I think both the Chicago Trust Company and Cody Trust Company advertised in their circulars this furniture was part of the security sold to bondholders."[178] And he also knew the implication of this fraud and said "I do not say that there was not an existing cause of action against perhaps the Cody Trust and the Chicago Trust. I put a period there."[179] But he "put the period" too late. He had already shown his recognition of the extent of the double fraud. He knew that $120,000 worth of furniture that Granada was obligated to pay for had almost wholly disappeared and could not be found. He said, "I would not be surprised if you told me those financial records showed charges by Pick & Company against Granada, the old company and the new company, amounting to $120,000. I never considered the question from the standpoint that *$120,000 worth of furniture must have been distributed among other places than the Granada itself.*"[180] The conclusion to be drawn is simple. This law firm knew that the debtor and its bondholders had causes of action against their clients, but they became the attorneys for

176. PR. 497.
177. PR. 499, 497.
178. PR. 499.
179. PR. 499.
180. PR. 497. In an attempt to explain this away he said a moment later: "I have a pretty good notion of what became of the $120,000 worth of furniture. The inventory made in 1933 which fixed the value at $40,000 after having spent $35,000 in replacing it, depreciated the value of the stuff in the place at that time, as those appraisers saw it; about forty-three or forty-four thousand in 1933."
Net Loss—$115,000.

the only persons who could prosecute such actions, *i. e.*, the trustee and the bondholders' committee. This disloyalty is reprehensible. Further admissions were made by Mr. O'Brien. He testified that his firm and rendered an opinion of Granada's title in 1924,[181] and that "I think it is substantially so that in 1929 we did handle the set up of the Granada Apartments, Inc., and the transfer from the old corporation. The legal work was handled in our office."[182] He did not state who his firm was representing when it did this work in 1924 and 1929. Mr. O'Brien admitted that his firm spent seventy-eight months[183] in the state court foreclosure proceeding. In the absence of any other satisfactory explanation of such a delay, it is reasonable to presume that this delay was for the purpose of allowing the statute of limitations to run for the protection of the former unfaithful Granada fiduciaries, who were clients of his firm. Mr. Wenstrand, according to Mr. O'Brien, was one of these clients.[184] Mr. Wenstrand and others were indemnitors on certain surety bonds to Albert Pick & Company and Mr. O'Brien admitted it.[185] City National and its bondholders' committee obligingly paid off Mr. Wenstrand's debt out of the bondholders' money,[186] and no one embarrassed Mr. Wenstrand by asking him to pay his own obligations.[187] For which Mr. Wenstrand was undoubtedly very grateful to these, his lawyers.

A portion of the claim of his firm which Mr. O'Brien tried to prove up as lawyer-witness was for legal work done for the Granada Bondholders' Committee. In this regard Mr. OBrien said: "* * * we were employed by the Com-

181. PR. 496.
182. PR. 497.
183. PR. 502.
184. PR. 503.
185. PR. 496.
186. PR. 229-230. This payment was aided by the fact that one of Wenstrand's co-indemnitors, Mr. Riddle, was a member of the Granada Bondholders' Committee. PR. 20
187. PR. 225.

mittee."[187a] But what did the Committee say about this? Arnold M. Johnson, one of respondent's witnesses who said he was Secretary of the Granada Committee,[188] testified as follows:

> "The officers of the old Central Republic Bank and Trust Company employed the attorneys now representing the City National Bank in this proceeding. *The Committee had nothing to do with it.* The Central Republic Bank and Trust Company employed the attorneys in the case of Harris against Tuttle, which went to the Supreme Court.[189] *The Committee had nothing to do with hiring those lawyers* * * * The appeal in the Tuttle case was actually in the name of the Committee."[190]

This witness had already testified that "the Committee took the action to have the trustee intervene, *just why counsel advised that I don't know,* but that was the mechanics * * * the Committee would cooperate in any way necessary."[191] This was the same witness which Mr. O'Brien had so much confidence in that he named him as a supporting authority for the things which he (Mr. O'Brien) was telling the court.[192]

From Mr. O'Brien's testimony, it would seem that he and his firm also represented the additional conflicting interests of the Cody Trust Company, for he said, "* * * Hiram Cody was able to persuade McKieth[193] that the Pick mortgage was invalid and no good, and *he had the attorneys* who could establish its invalidity."[194] There can be no doubt but that Cody's attorneys as thus referred to were, Defrees, Buckingham, Jones & Hoffman, for Mr. O'Brien testified that his firm spent 650.9 hours on the Pick furni-

187a. PR. 487.
188. PR. 421-422.
189. 297 U. S. 225 (1936).
190. PR. 437. See Appendix "A" at page 93 below.
191. PR. 436.
192. PR. 487.
193. A Vice-President of the Chicago Trust Company.
194. PR. 499.

ture litigation in the state court[195] and although "that litigation was not successful"[196] they were paid $2,000 for it.[197] Thus we see that the law firm represented the party owning and controlling Granada's common stock[198] although it conducted the litigation in the name of the bondholders' fiduciaries which may have been an additional reason why it took the firm six and one-half years to conduct the bondholders' foreclosure in the state court,[199] despite which the Committee did not make any objection about the allowance of fees.[200]

Although Mr. O'Brien represented the Granada Bondholders' Committee, he was not particularly interested in the Granada's revenues. On one occasion he had prepared an instrument purporting to justify reducing the *monthly payments* from Arlington to Granada of from $900 to $600. Mr. Edward Hall testified to this in open court[201] and Mr. O'Brien although present did not deny it. The preparation of this instrument occurred while the Granada was in the foreclosure court where Mr. O'Brien and firm supposedly represented the complaining bondholders,[202] although this foreclosure proceeding was only a ruse in the main battle to defeat the Pick furniture claim.[203] Mr. O'Brien and firm also had to do with the Lincoln Park Manor which also purchased heat and other services from the debtor. He was not explicit as to his connection in that regard, however, he merely said, "later * * * *we* got a receiver for the Manor * * *"[205]

195. PR. 503.
196. PR. 499.
197. PR. 497. (This fee was paid with Granada Bondholders money and not with Cody Trust Co. money.)
198. PR. 488 and PR. 220.
199. PR. 502.
200. PR. 214 and PR. 229.
201. PR. 402.
202. PR. 404.
203. PR. 411.
205. PR. 500.

Mr. O'Brien was a difficult witness to cross-examine. He forgot things. Although his firm chartered a new Granada Corporation and transferred most of the assets to it in 1929[206] he had, four years later forgotten all about that and didn't know that the old Granada Corporation had been dissolved[207] and he nearly forgot that he even knew it in 1937 when he testified in the present proceedings.[207] Yes, Mr. O'Brien conveniently forgot many things—things which were important and which he should have freely disclosed to the District Court rather than make the court gather them from its cross-examination of other witnesses with better memories. But when the court heard these other facts, it included them in its findings of fact and they were so undoubtedly true that respondents would not assign error to them.[208] Some of these uncontested findings of fact of the trial court are:

(1) "A prospectus was issued by Chicago Trust Company, and a separate one by Cody Trust Company. Both of these documents are in the record; they repeat the announcement made to the bondholders in 1924, that the security includes the furniture and fixtures at Granada Hotel."[209]

(2) "The Superior Court was not informed about the damage claims and the proceedings on the Wenstrand and appeal bonds * * * it was not known (to any court or Granada creditors) that officials of Cody Trust Company and Wenstrand had agreed to purchase the receiver's certificate if it was not paid off out of Granada funds; nor was it known * * * that Wenstrand and others are indemnitors upon all the Wenstrand bonds in this court."[210]

(3) "The records show that the attorneys whom they (City National) now retain, have been active in all these matters since 1924, and have had to do with most of these litigations. It does not appear that City National or anyone tried at any time to have the Codys

206. PR. 496, 497 and 502.
207. PR. 501.
208. Respondent's assignment of Error, PR. 817-832.
209. Paragraph 16, PR. 774. This related to the refinancing in 1928.
210. Paragraph 25, PR. 777-778.

or the Cody Trust Company or its officials, or the Chicago Trust Company, or its officials, or any successors or receivers for them, or Wenstrand and the other indemnitors on the court bonds that were released by buying the Pick furniture the second time with bondholders' money, and buying new furniture from La Salle Furniture and Supply Company when Pick & Company took away part of the furniture, to have any of these persons perform their promises and duty to the Granada property and the Granada Bondholders.''[211]

(4) ''(One set of attorneys) have prepared the financial papers and (represented) Chicago Trust Company, Thuma, and also * * * Central Republic Trust Company, and City National Bank and Trust Company and the Bondholders' Committee for Granada property.''[212]

(5) ''This method was pursued with relation to Arlington Apartment Hotel property and Lincoln Park Manor Hotel property * * *. For it there is a similar City National Bondholders' Committee. City National was trustee for both Arlington and Lincoln Park Manor.''[213]

(6) ''In present reorganization case, City National and said attorneys filed in writing objection and motion to dismiss on May 17, 1937, in an effort to thwart and stay all action of this court.''[214]

(7) ''City National Exhibit 'X' was prepared by Defrees, Buckingham, Jones and Hoffman, attorneys. They are in this court in this accounting litigation, representing City National, the Granada Bondholders' Committee and a separate accounting suit against Arlington, Inc. * * * They filed the Thuma partial foreclosure on the Granada property in 1930. * * * At that time these attorneys withdrew as counsel for Thuma and immediately appeared on the opposite side of the record as counsel for the Chicago Trust Company, then for the Bondholders' Committee, and then for City National. These attorneys have represented throughout, the Bondholders' Committee for the Granada, the Arlington and the Lincoln Park Manor prop-

211. Paragraph 36, PR. 781-782.
212. Paragraph 44, PR. 785.
213. Paragraph 39, PR. 783.
214. Paragraph 46, PR. 786.

erties, and likewise the City National as Trustee of these properties."[215]

(8) "No person in a confidential relationship to one of these properties could rightfully represent another."[216]

(9) "After 1931 no interest was paid to first or second mortgage bondholders; the tax bill unpaid rose from about $30,000 in 1931 to about $60,000 in May 1937."[217]

(10) "The court does not intend to minimize, but does recognize the many wrongs and injustices to the debtor estate shown by this record, which have been committed by City National, by the Bondholders' Committee and by their attorneys and counsel; the court finds that all equities are with the Court Trustee; but the court believes that justice to all concerned will be rendered more speedily if the opposing claims are set off against each other. * * *"[218]

Thus from these admittedly correct and uncontested findings of fact and conclusions of law of the trial court, the breaches of trust committed by this law firm which claims $24,500 for fees, stands forth in bold, uncontradicted language—language which respondents are now estopped from denying because they assigned no error to it.[219]

Other findings of fact and conclusions of law to which respondents did assign error were amply supported by the evidence and therefore were not argued by the respondents in their briefs in the Circuit Court of Appeals. These findings were:

(1) "In the Wenstrand suit in this court bonds were given of $5,000, $20,000 and finally $40,000 to stay the sale."[220]

(2) "To protect those who initiated the bond issue and sold the bonds, another employee or nominee of Cody Trust named Thuma, was now used to file on June 10, 1930, a suit for partial foreclosure in the

215. Paragraph 48, PR. 787.
216. Paragraph 49, PR. 788.
217. Paragraph 51, PR. 788.
218. Paragraph 57, PR. 790-791.
219. Respondents' Assignment of Error, PR. 817-832.
220. Paragraph 17, PR. 774.

Superior Court of Cook County upon a claim of default upon certain interest coupons of the 1928 second mortgage Granada issue."[221]

These findings indicate the fraud involved in the institution of the foreclosure suit and the use by this law firm of an improper party and straw man as party plaintiff. It was partly for services rendered in this foreclosure action that respondent law firm asks an allowance of fees.[222] Since respondents did not argue against these findings in the Circuit Court of Appeals, they are now estopped to deny their truth.[223] These findings, the truth of which is thus admitted, support other findings which were argued by respondents in the Circuit Court of Appeals. These findings in part were:

(1) "The decree dated December 18, 1936, and orders of 1933 and later in said case 519151 for foreclosure in Superior Court are all void for want of good faith. Granada Hotel Corporation (predecessors of the debtor) was dissolved by the Superior Court of Cook County, Illinois, in cause numbered 50985, upon due complaint by the attorney general of Illinois; and decree entered for dissolution May 17, 1930. All parties knew it was defunct more than two (2) years, when for the first time in August, 1933, proceedings to foreclose first trust deed and to issue receiver's certificate were attempted by cross bill. * * * The Superior Court *Proceedings are void also for non-disclosure and for want of a true trustee party plaintiff.*"[224]

(2) "All these litigations for ten years were conducted and financed with Granada money,[225] and each of them successively was a new step to try to stop execution of the judgment and decree secured in 1928 by Pick under chattel mortgage. This judgment was

221. Paragraph 19, PR. 775.

222. PR. 503.

223. In *Magruder* v. *Drury*, 235 U. S. 106, 113 (1914) this court stated the rule as follows:

"Alleged errors not of a fundamental or jurisdictional character, which were not presented to the appellate court for consideration, and which were waived, either expressly or by implication will not be regarded as before this court."

224. Paragraph 30, PR. 779.

225. Testimony of Vincent O'Brien at PR. 473, PR. 479, PR. 484.

for money which the bankers (who initiated the bond issue and sold the bonds) had owed since 1924. The whole ten years of litigation grew out of the fact that Chicago Trust Company and the Codys and their attorneys[226] failed in their promise to the bondholders in 1924 and 1928 to remove all debt and to tie in the furniture and equipment of the Granada Hotel as part of the security[226] which the bondholders purchased. The property and the bondholders have received the punishment."[227]

(3) "Since the Granada property was built in 1924, one set of attorneys have prepared the financial papers and have represented Chicago Trust Company, Cody Trust Company, Thuma, Wenstrand and Hall as agents and nominees for said companies, and also for Central Republic Trust Company and the Bondholders' Committee for Granada property. Throughout ten years of litigation a connected purpose is shown to prevent a clearance of this property from court entanglements. As each suit come to an adverse termination, a new one was begun in the name of some new Trust Company or some new nominee, whose name was used in some new suit or some new court to delay, embarrass and harass creditors of the estate."[228]

(4) "None of these law suits have accomplished any appreciable good for the debtor estate; none of them has added to or increased the assets which came into the care of this court."[229]

(5) "The record does not disclose that any information ever was given to the bondholders or creditors of Granada, about the receiver's certificate, or any moneys used in furniture litigation; or that the City National as Trustee and the Bondholders' Committee and the attorneys, occupy similar relationships to the Arlington property, and to Lincoln Park Manor property; * * * nor does the record show that any bondholder or creditor of Granada knew that City National and the Bondholders' Committee were employing said attorneys who had formerly represented adverse in-

226. Testimony of Vincent O'Brien at PR. 497, PR. 499.

227. Paragraph 37, PR. 782. See page 92 below.

228. Paragraph 44, PR. 785. See Testimony of Vincent O'Brien at PR. 473-504.

229. Paragraph 45, PR. 785. Likewise the opinion of the Circuit Court of Appeals did not state that the services of these lawyers were beneficial. At PR. 963 the court said: "This we need not determine. * * *"

> terests and currently were representing adverse interest. * * * The breach of confidence thus in evidence is so fundamental as to destroy all right for any of these parties to have compensation or reimbursement for any services."[230]

We now discuss whether the trial court was legally correct in disallowing the fee claims of the committee, the trustee and their lawyers.

Under the Chandler Act a Bankruptcy Court Is a Court of Equity.

Your Honors have often held that a Bankruptcy Court is a court of equity. Five years ago under another Bankruptcy Act this court in *Continental Illinois National Bank & Trust Company* v. *Chicago, Rock Island and Pacific Railway Company*, 294 U. S. 648, 55 St. Ct. 595 (1935), ruled that bankruptcy courts "are essentially courts of equity."[231]

In the term of court just closed Your Honors again had occasion to speak upon the subject in the opinion rendered in the case of *Pepper* v. *Litton*, 308 U. S. 295, 84 L. Ed. 160, 60 S. Ct. 238, (1939). In this case the court said (p. 304):

> "The bankruptcy courts have exercised these equitable powers in passing on a wide range of problems arising out of the administration of bankrupt estates. They have been invoked to the end that fraud will not prevail, that substance will not give way to form, that technical considerations will not prevent substantial justice from being done."

The Congress of the United States in enacting the Chandler Act made it clear that it wished this equity jurisdiction

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230. Paragraph 50, PR. 788.

231. "By section 2 of the Bankruptcy Act (U. S. C. Title 11, S. 11, 11 U. S. C. A. 11), courts of bankruptcy are invested 'with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings.' They are essentially courts of equity and their proceedings inherently proceedings in equity, the words 'at law' probably having been inserted only with regard to * * * authority to arraign, try, and punish bankrupts and others for violations of the act. Their adjudications and orders constitute in all essential particulars decrees in equity."

of the bankruptcy reorganization courts to continue in full force and effect. Section 114 of Chapter X provides that the jurisdiction and powers of the reorganization court after approval of the petition "shall be the same as in a bankruptcy proceeding upon adjudication." Section 2 of Chapter II provides:

> "(a) The Courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and are hereby invested * * * *with such jurisdiction at law and in equity*[232] as will enable them to exercise original jurisdiction in proceedings under this Act * * * to * * * *
>
> "(2) Allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates. * * *"

The broad power granted the reorganization court by Section 212 of Chapter X[233] is also inconsistent with any other view than that the Congress granted the bankruptcy reorganization court very broad equitable jurisdiction and powers. The right to require an accounting is a judicial function limited to only a court of equity. Commenting upon this section as it existed under 77-B, a writer[233-A] has

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232. Italics supplied.

233. Section 212: "The Judge may examine and disregard any provision of a deposit agreement, proxy, power or warrant of attorney, trust mortgage, trust indenture, or deed of trust, or committee or other authorization, by the terms of which an agent, attorney, indenture trustee, or committee purports to represent any creditor or stockholder, *may enforce an accounting thereunder*, may restrain the exercise of any power which he finds to be unfair or not consistent with public policy and may limit any claim or stock acquired by such person or committee in contemplation or in the course of the proceeding under this chapter to the actual consideration paid therefor." (Italics supplied.)

233-A. George F. Medill, "Fees and Expenses in a Corporate Reorganization Under Section 77B," 34 Michigan Law Review 331 at 342-343, (1936). This author further states:

> "There is really nothing new about an equity court scrutinizing and disregarding agreements between fiduciaries and those whom they represent. From a very early date it has been the practice of the court to keep a watchful eye on any agreement between a trustee and his *cestui* to see that it is fair and reasonable and represents the true interest of the parties. The court goes to great lengths in protecting the rights of persons not in a position to act for themselves. If one person is before the court as the representative of others, the court of its own volition exercises a vigilant solicitude to protect the interests of those represented against injury or injustice. The creditors and stockholders involved in a complex reorganization seem to be in particular need of someone to look after them."

pointed out that it is "no more than the statement of principles applied in equity whenever there is a fiduciary relationship."

In the case at bar the trial court found it practicable to apply the Chandler Act to the present proceedings and did so apply it.[234] Although this finding of the trial court was assigned as error, respondents did not argue it in the Circuit Court of Appeals. Counsel for respondents, Mr. Vincent O'Brien, knew that whether the old 77B Section or the Chandler Act was applied the result would be the same. As a witness, Mr. O'Brien stated:

> "In the event the court should find the City National Bank has been negligent in one way or another, or has mismanaged in one way or another, and the court surcharges its account, I would take it for the purpose *the Bankruptcy Court is sitting as an equity Court* and that the Judge has the same control over the costs and expenses of the proceedings."[235]

The Circuit Court of Appeals paid lip service to this proposition.[236]

Sitting as a Court of Equity the District Court Properly Disallowed All the Claims of Respondents.

Since the bankruptcy reorganization court is a court of equity, it is under the duty to apply the rules and principles of equity to proceedings pending before it. This is particularly true when the court is forced to determine the validity of claims sought to be allowed to fiduciaries. On such an occasion the court must apply the equity rules relating to fiduciaries.[237]

As we have already seen at pages 21-23 of this brief,

234. Paragraphs 2 and 10, PR. 769 and PR. 771-772.

235. PR. 503-504. Italics supplied.

236. PR. 965.

237. In *Pepper* v. *Litton*, 308 U. S. 295 (1939) this court said (p. 307): "As we have said, the bankruptcy court in passing on allowance of claims sits as a court of equity. Hence these rules governing the fiduciary responsibilities of directors and stockholders come into play on allowance of their claims in bankruptcy."

the respondents, *i. e.*, the Bondholders Committee, City National as trustee and counsel, were fiduciaries. They petitioned for the allowance of fees. The United States District Court was then under the duty to apply the equity rules governing fiduciary relationships to their fee claims. And the court did just that. As a result of the application of such rules the District Judge disallowed these claims for fees.[238] A reading of the Findings and Conclusions of the trial court discloses the application of these equitable rules in a manner in keeping with the best traditions of American and English equity practice. Throughout these findings the court carefully weighed the evidence in the interests of substantial justice to the end that "substance would not give way to form."[239]

At pages 23-25 of this brief, we have discussed the duties of fiduciaries from a legal standpoint. At pages 25-56 of this brief, we have shown that from a factual standpoint these fiduciaries did not perform those duties and in many ways acted in breach of their trust responsibilities. The trial court found that this was the case. What then was the penalty which a chancellor should impose upon such fiduciary claimants who had violated the equity principles governing the fiduciary relationship? What rule of equity should be applied to these fiduciaries who were disloyal to their trust? The rule applied by the court was: *A fiduciary who is unfaithful to his trust*

238. Findings of Fact and Conclusions of Law, PR. 769-793. Decree, PR. 794-795.

239. Conclusions of Law of the District Court, Paragraph 67, PR. 792: "Legality is not equity, nor a defense. *To use the forms of law to cloak fraud or misuse of funds or property, only increases the wrong done.* Lawsuits as protective cover for fraud are as improper as transfers. Administrative or court approval to an act, without adequate disclosure or fair dealing to absent beneficiaries who have no independent representation, will be treated as void." (Italics supplied.)

forfeits all right to compensation.[240] This is a principle of equity well known to all fiduciaries. Even the most elementary texts on fiduciary duties fully recognize it to the extent of stating that even exculpatory language in the trust instrument will not abrogate the rule.[241] We have already seen that the courts of Illinois follow this rule.[242] The outstanding text on trust law likewise calls attention to this rule.[243] The Restatement of the Law on Trusts[244] adopts the rule but states that the question of compensation is within the court's discretion. The rule has been followed by several Federal Courts. In the case of *In Re Perelstine*, (D. C. Pa., 1930) 44 Fed. (2d) 62, the court said:

> "It is well established law that a trustee or receiver who is unfaithful to the trust forfeits all

240. The trial court concluded that:

> "Continuously since the Committee was organized in 1933, these adverse situations of interests have existed and were fully known to the Committee, to the City National and to said counsel, all of whom have committed breaches of trust in failure to make full disclosure and failure to resign from all but one of said relationships. *The breach of confidence thus in evidence is so fundamental as to destroy all right for any of these parties to have compensation or reimbursement for any services.*" (Italics ours.) Paragraph 50, PR. 788.

241. Loring "A Trustee's Handbook" 1940, Little, Brown and Company. Section 101, pp. 264-265:

> "In a number of cases, the court has deprived the trustee of compensation as a result of a breach of trust but because of the presence of exculpatory language has declined to surcharge him with liability. * * * Needless to say the provision is never effective to save the trustee from liability arising from breach of his duty of loyalty. *Matter of Howard*, 110 App. Div. 61, 97 N. Y. Supp. 23 (1905) aff'd., 185 N. Y. 539, 77 N. E. 1189 (1906); *Matter of Mallow's Estate*, 43 Misc. 569, 89 N. Y. Supp. 554 (1904) aff'd. sub nom., *Matter of Howard*, 110 App. Div. 61, 97 N. Y. Supp. 23, (1905), aff'd., 185 N. Y. 539, 77 N. E. 1189 (1906)."

Also see page 43 of 1928 edition, page 39 of 1907 edition and page 32 of 1898 edition of Loring's "A Trustee's Handbook."

242. Page 25 of this brief.

243. "The Law of Trusts and Trustees" Bogert, (1935) Vol. IV, Sec. 979:

> "In the absence of statute it lies within the discretion of the court having jurisdiction over the accounting to decide whether the conduct of the trustee deserves normal, reduced or no compensation. The court is apt to deny compensation where there has been an important breach of trust, especially if it be of a willful character. * * *"

244. Section 243.

right to compensation. In the instant case, Frederick was unfaithful."[245]

n another case[246] the court under similar circumstances nvolving a breach of trust by an attorney ruled:

"Under elementary principles (if these findings are sustained) petitioner was not entitled to receive or to retain the compensation in question."

The case of *United States* v. *Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 282 U. S. 311 (1930), involved a scheme by which an attempt was made to defeat he jurisdiction of the Interstate Commerce Commission ver fees of reorganization managers, committees and awyers. Five Justices of this court ruled that the commission had no jurisdiction over the fees involved since was a matter of private contract with the railroad tockholders. Justice Stone dissented however and his issenting opinion was concurred in by Justices Holmes nd Brandeis. At page 342 the dissenting Opinion stated:

"* * * Neither this Court nor the court below is acting any the less as a court of equity because its powers are invoked to deal with an order of the Interstate Commerce Commission. The failure to conform to those elementary standards of fairness and good conscience which equity may always demand as a condition of its relief to those who seek its aid, seems to require that such aid be withheld from this appellee. See *Davis* v. *Wakelee*, 156 U. S. 680."

espondents in the case at bar were similarly situated. hey entered a court equity and petitioned for the allownce of fees. The trial court sitting as a court of equity enied their petition when it found that they had acted breach of trust for many years. As a court of equity, he trial court had the right to condition its relief upon

245. This portion of the case was affirmed at 46 Fed. (2d) 1019 (1931).
246. *In Re De Ran*, 260 Fed. 732 at 741 (C. C. A. 6, 1919).

the clean hands and conscience of the petitioning fee claimants. When it appeared that the complete transaction was one in violation of true trust responsibilities the court correctly withheld its aid from the respondents and denied their prayer for relief. The trial court could not have made disposition in favor of respondents. After several weeks of hearings conducted in open court the true facts stood out with graphic clarity. But there was no need for the Judge to have heard the proceedings himself, to have reached the same result. Equally from the record, if made on a reference to a Master, the breaches of trust involved would have made their presence known.

For instance: In May 1937 the City National Committee and counsel, presented to the District Court a plan for Granada reorganization.[246a] This plan mentions a claim by City National upon state court decree, as a debt reduced to judgment.[246b] The plan was confirmed July 14, 1937. It was not until August 30, 1937 that City National filed its pleading for approval of its accounts which is part of the present proceeding. In that pleading under oath City National says (PR. 115):

> "* * * that the chancellor in said foreclosure proceedings in and by said decree expressly indicate(d) that by the entry thereof, he did *not* purport to *approve any account of your petitioner* as successor trustee in possession of the said premises * * *."

Neither in the plan nor at any time did City National make disclosure that it had a balance of funds in hand from operation of the Granada Hotel prior to May 17, 1937, when the Court Trustee took over the operation. All these facts were brought out in the present proceeding in October 1937, by cross-examination of City National witnesses and production of City National records. Petitioner submits that the procurement by City National, its committee and

246-A. PR. 66-78.

246-B. PR. 68. "There is due and owing City National Bank and Trust Company of Chicago, as Successor Trustee * * * for its own use and benefit, certain sums established by decree of foreclosure. * * *"

counsel, of the order of confirmation of the Granada plan without such disclosure, was a fraud upon all the beneficial owners of Granada and a fraud upon the District Court.

On May 17, 1937 the Reorganization Court had ordered turnover of all funds and property to the Court Trustee. The Court Trustee at once made his demand orally and in writing. Neither the order nor the demand has yet been obeyed. In the present hearing it was shown by the active ledger sheets of the City National Bank that $1,990.86 remained on deposit from the operation of Granada Hotel.[246c] Not one word about this was mentioned in the Granada plan nor in the subsequent pleadings by City National, the committee or its counsel. Respondents seek payment for preparing this fraudulent reorganization plan.

Even a bird's eye view of the proceedings could have left no doubt of the lack of social conscience and common honesty of those persons and corporations who then stood before that court of equity, asking fee allowances for their (dis)services. Such a bird's eye view of the proceedings would appear thus:

246-C. See page 7 of this brief.

Chart One

Breaches of Trust by the Committee

Masters Served.	Extent of Domination.	Evidence of Relationship Adverse to Granada.	Overt Acts Committed.
1. CITY NATIONAL BANK.	(1) Employer of the two active members[247] and of committee secretary;[248] (2) caused committee to be formed;[249] (3) supplied personnel and office space;[250] (4) if fees were allowed committee they went to City National and not to committee;[251] (5) City National picked lawyers, committee did not exercise own choice.[252]	City National was trustee of Arlington and of Lincoln Park Manor and contracted with itself as trustee of Granada to sell heat and refrigeration to them at reduced price.[253] The Committee did not object.[254] Lawyers for committee were City National's lawyers.[255]	Petitioned for appointment of City National as trustee,[256] and did not object to City National's fees,[257] only had two or three sit in on committee meetings,[258] did not object to useless litigation to harass creditors.[259]
2. CODY TRUST COMPANY AND OFFICERS.	(1) Three members of committee were formerly associated with Cody as employees or co-underwriters. They were: Riddle, Peterson and Kilmer.[260]	Cody Trust Company had issued false prospectus to bondholders which said that furniture was part of the bondholders' security.[261] Cody Trust was the principal *stockholder* of Granada, debtor.[262]	Committee did not seek to hold Cody Trust Company liable for fraudulent misrepresentation or otherwise,[263] and issued Receiver's Certificate to pay for furniture[264] that had almost wholly disappeared from the Granada premises.[265]
3. LEWIS RIDDLE.	A member of the Committee[266] at whose office the committee meetings were at first held.[267] Two former associates were also on the Committee.[267-A]	Riddle was personally obligated as signer on the Pick litigation bond.[268]	The Committee approved the use of Granada funds to pay off Riddle's private liability on the bonds.[269]
4. ARLINGTON HOTEL.	The interlocking Arlington Committee was wholly made up of City National employees[269-A] which employer dominated the Granada Committee,[270] and was trustee of Arlington.[270-A]	Granada sold heat and refrigeration to Arlington.[271]	Payments by Arlington to Granada were reduced from $900 to $600 per month,[272] and a debt of $4,080 due and owing to Granada for the year 1933, was charged off.[273]
5. CHICAGO TRUST COMPANY.	Attorneys for the Committee[274] were attorneys for the Chicago Trust Company.[275]	Chicago Trust Co. had issued a false prospectus to the bondholders which had stated that the furniture belonged to the bondholders.[276]	Committee and attorneys failed to sue the Chicago Trust Company for its fraud on behalf of their bondholders.[277]

247. PR. 239, 336, 423.
248. PR. 421-422.
249. PR. 210-211, 318, 422, 437.
250. PR. 210-211, 469, 318, 336.
251. PR. 210-211, 470.
252. PR. 437, 436.
253. PR. 184, 177, 400, 213, 402, 405-406.
254. PR. 178-179, 400, 213.
255. PR. 437, 436, 473, 489.
256. PR. 212, 239, 436.
257. PR. 214, 229.
258. PR. 229-230.
259. PR. 411, 206.
260. PR. 201-203, 211, 487.
261. PR. 225, 499.
262. PR. 220, 488, 407.
263. PR. 225, 499.
264. PR. 225, 479.
265. PR. 497.
266. PR. 201.
267. PR. 201.
267-A. PR. 201, 203.
268. PR. 229, 476.
269. PR. 229, 479, 225.
269-A. PR. 178-179, 213.
270. PR. 210-211, 239, 470.
270-A. PR. 184, 177.
271. PR. 402.
272. PR. 404.
273. PR. 333, 405-406.
274. PR. 473.
275. PR. 497.
276. PR. 225, 499.
277. PR. 490.

Chart Two

Breaches of Trust by City National as Trustee

Masters Served.	Extent of Domination.	Evidence of Relationship Adverse to Granada.	Overt Acts Committed.
1. ARLINGTON HOTEL.	City National was trustee of Arlington[280] and had set up an Arlington Bondholders' Committee which consisted entirely of City National employees.[280-A]	Arlington purchased heat, refrigeration, hot and cold water from Granada[281] which was controlled by City National as trustee.	Monthly payments from Arlington to Granada were reduced from $900 per month to $600[282] and balance of $4,080 due and owing to Granada was removed from Granada's books by agents of City National.[283]
2. CENTRAL REPUBLIC.	City National was organized to and did take over the employees, banking and trust business of Central Republic. City National transacted all of Central's trust business, including the Granada trust, from 1932 on, long before Central Republic collapsed and resigned from trust.[284]	As successor trustee, City National had the duty of getting a full accounting from Central Republic if it wished to fully protect the Granada bondholders and save itself from liability.[284-A]	Central Republic was released[285] from all liability in regard to Granada without having fully accounted. City National hired the same lawyers as had represented Central Republic.[286]
3. CODY TRUST COMPANY AND OFFICERS.	In creating the Granada Bondholders' Committee[287] City National arranged for three former Cody associates to have committee memberships.[288] If City National as trustee then sued Cody or officers, the Committee could retaliate by suing City National.[289] City National served as depositary under the Committee.	The Cody Trust Company had issued fraudulent prospectuses to the bondholders in both 1924 and 1928.[290] Hiram Cody and two employees named Riddle and Wenstrand were indemnitors on furniture litigation bond of $40,000 in Federal Court.[291]	City National did not sue Cody or its officers for fraud or otherwise.[292] As trustee City National paid the obligation of Cody and others on the indemnity bond with Granada's funds without attempting to collect from them.[293] Cody's lawyers[294] were City National's lawyers, and were counsel for the Committee.[295]
4. CHICAGO TRUST COMPANY AND OFFICERS.	Attorneys for City National were the attorneys for Chicago Trust Company.[296]	Chicago Trust Company had issued a fraudulent prospectus to the bondholders.[297]	City National and attorneys failed to sue Chicago Trust Company on behalf of bondholders for its fraud[298] and condoned the using of bondholders' money a second time to pay for the furniture.

280. PR. 177, 400, 184.
280-A. PR. 213.
281. PR. 213.
282. PR. 402, 304.
283. PR. 333, 405-406, 304.
284. PR. 183, 195-196, 415, 202, 211, 230-231, 421-422.
284-A. PR. 976.
285. PR. 958.
286. PR. 437, 473.
287. PR. 318, 422, 437.
288. Mr. Riddle, PR. 201.
Mr. Peterson, PR. 201.
Mr. Kilmer, 203.
289. Thus by allowing itself to be appointed trustee on the petition of this Committee (PR. 211), City National placed itself in a position where it could not perform its duty against Cody Trust officials.
290. PR. 225, 499.
291. PR. 229-230, 476, 499.
292. PR. 225.
293. PR. 225.
294. PR. 499, 977-978.
295. PR. 473, 487.
296. PR. 497.
297. PR. 499.
298. PR. 499.

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Chart Three.

Breaches of Trust by Defrees, Buckingham, Jones and Hoffman, as Counsel for the Committee.

Masters Served.	Extent of Domination.	Evidence of Relationship Adverse to Granada.	Overt Acts Committed.
1. CITY NATIONAL BANK.	City National hired this firm as its counsel as trustee of Granada[299] when counsel advised the Committee to petition to have City National appointed as such trustee.[300]	City National was trustee of Arlington and Lincoln Park Manor[301] who purchased heat and refrigeration from Granada at a reduced price.[302] It was the duty of counsel for the Committee to see that the Granada Bondholders got the highest possible price for services rendered competing hotels.	The reduced price was kept in effect without increase.[304] and a balance due and owing to Granada before the decrease was arranged was never paid and was cancelled[305] and the committee never sued City National for this mismanagement. *These attorneys claim for services to the committee but were never hired by the Committee.*[306]
2. CENTRAL REPUBLIC TRUST COMPANY.	Defrees, Buckingham, Jones and Hoffman were counsel for this bank as trustee of Granada.[307]	It was the duty of Central Republic to fully account[308] for its stewardship of the trust to the successor trustee, City National. This firm was counsel for both banks.[307]	An arrangement was made whereby Central Republic was released from all liability in connection with its trusteeship of the Granada.[309] This firm was present in court when Central Republic was so released.[310]
3. CHICAGO TRUST COMPANY AND OFFICERS.	Clients of Defrees, Buckingham, Jones & Hoffman.[311]	The bondholders through their committee and trustee had a cause of action against the Chicago Trust Company and its officials because of the fraudulent misrepresentations contained in the prospectus issued by that underwriter[312] and counsel admitted the possibilities of such a cause of action.[313]	No effort was made by any of the respondents to collect in behalf of the bondholders for the damages caused because of the fraud committed by the Chicago Trust Company and its officials.[314] There is nothing in the record showing that counsel ever advised the bondholders or their Committee or trustee of their legal rights against this house of issue.
4. CODY TRUST COMPANY AND OFFICERS.	Clients of Defrees, Buckingham, Jones & Hoffman.[315]	The bondholders through their committee and trustee had a cause of action against the Cody Trust Company and its officers because of the fraudulent prospectus issued by them.[313] The possibilities of such a cause of action was known to the law firm.[313]	No effort was made to collect from the Codys for the fraud committed by them.[316]

299. PR. 473.
300. PR. 436.
301. PR. 400, 184.
302. PR. 405-406.
304. PR. 405-406.
305. PR. 333, 405-406, 304.
306. PR. 437.
307. PR. 473.
308. PR. 976.
309. PR. 958.
310. PR. 482.
311. PR. 497.
312. PR. 499, 325.
313. PR. 499.
314. PR. 499.
315. PR. 499, 978.
316. PR. 225.

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Chart Three—Continued.

Masters Served.	Extent of Domination.	Evidence of Relationship Adverse to Granada.	Overt Acts Committed.
5. MR. WENSTRAND.	Wenstrand was a client of Defrees, Buckingham, Jones & Hoffman.[317]	Wenstrand was personally obligated to pay on a $40,000 indemnity bond signed by him in the furniture litigation in which case this law firm was his counsel.[318]	Bondholders' money was taken from the Granada trust fund in the possession of the trustee, and Wenstrand was released from his $40,000 liability.[319]
6. ARLINGTON HOTEL.	The Arlington Hotel was a client of this law firm by reason of the fact that the firm was counsel for City National as Trustee of Arlington[321] and also was counsel for the Arlington Bondholders' Committee.[322]	Arlington purchased heat and refrigeration from Granada.[323]	This firm drew up a memorandum purporting to be a contract[324] which reduced the monthly payments to Granada from $900 to $600.[325] Later a balance of $4,080 on Granada's accounts receivable books, due from Arlington prior to the reduction was cancelled by a journal entry of a Mr. Hall[326] who was also a client of this firm.[327]
7. MR. THUMA.	Thuma was a client of Defrees, Buckingham, Jones & Hoffman.[328]	Thuma "owned" some *second* mortgage bonds on Granada.[329]	Although this firm during and since April of 1933 was counsel for the *first mortgage* bondholders of Granada (the committee)[330] and claim fees as such, they conducted until Aug., 1933 a foreclosure of the *second mortgage bonds* in the name of Mr. Thuma.[331] Then they withdrew as counsel for Thuma and immediately appeared on the opposite side of the record as counsel for Chicago Trust Company, then for the Bondholders' Committee, and then for City National.[332]
8. LINCOLN PARK MANOR BONDHOLDERS' COMMITTEE.	Defrees, Buckingham, Jones & Hoffman were counsel for this other committee, and for City National as trustee of the Lincoln Park Manor property.[333]	The Lincoln Park Manor Hotel purchased heat, refrigeration and other services from the Granada Hotel.[333]	None.[334]

317. PR. 496, 499, 503.
318. PR. 229, 499, 475-476.
319. PR. 229.
321. Uncontested Finding, Par. 48, PR. 787.
322. Uncontested Finding, Par. 48, PR. 787.
323. PR. 213, 402.
324. PR. 402.
325. PR. 405-406.
326. PR. 333.
327. Par. 44, PR. 785.
328. Uncontested Findings, Paragraph 44, PR. 785.
329. Uncontested Findings, Paragraph 48, PR. 787.
330. PR. 473.
331. Uncontested Findings, Paragraph 48, PR. 787.
332. Uncontested Findings, Paragraph 48, PR. 787, and also PR. 400.
333. PR. 213.
334. Paragraph 43, PR. 784-785.

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In Response to the Third Question Presented and to Assignments of Error (a), (b), (c), (o) and (p).

II.

A CIRCUIT COURT OF APPEALS IS BOUND TO PROCEED IN ACCORD WITH THE PRINCIPLES OF DUE PROCESS OF LAW AND MAY NOT REVERSE THOSE FINDINGS OF THE TRIAL COURT WHICH WERE NOT CONTESTED NOR ASSIGNED AS ERROR.

When the Circuit Court of Appeals reversed findings of fact of the District Court, which findings had not been contested by respondents in their assignment of errors or otherwise, it violated due process of law because that action denied this petitioner notice, hearing and his day in court.

This petitioner urges that the United States Circuit Court of Appeals for the Seventh Circuit has denied him that due process of law, which is guaranteed to him and the Granada owners by the Fifth Amendment to the Constitution[335] of the United States. The legal basis of this contention is that right to that "due process of law" to which the amendment refers is not confined to the proceedings and judgment of a trial court but fully exists in reference to the proceedings and judgment of a Court of Appeal. *An Appeal Court is not insulated from the Constitution.* Due process may be denied by an appeal court's departure from established procedure or lack of notice and hearing, just as violently and completely as it can be denied by a court of first instance. This is particularly true when the appeal court reverses the trial court, but it is even true of an affirmance.

In *Lutcher & Moore Lumber Company* v. *Knight*,[336] decided by this court thirty years ago, it was held that when a Circuit Court of Appeals affirmed a judgment of the court below on a fact not in issue in the court below and without having given an opportunity to the parties

335. "No person shall be * * * deprived of * * * property without due process of law * * *."

336. 217 U. S. 257, 30 S. Ct. 505 (1910).

to be heard upon that issue, it denied the appellants their "day in court" or

> "was the equivalent to condemning them without affording them an opportunity to be heard."

Some seven years later in *Saunders* v. *Shaw*,[337] this court ruled that another appeal court deprived a litigant of due process of law, when it reversed the judgment on the basis of a proposition of fact not in issue in either court and without affording the litigant the opportunity to be heard on that fact.

In the case at bar certain facts were generally admitted by respondents. Many of these facts thus admitted were made the basis of the findings of the trial court.[338] The present respondents were the appellants in the Circuit Court of Appeals and as such prepared and filed a certain assignment of errors.[339] This assignment of errors did not attack certain of these findings and therefore these findings stood admitted before all the world.[340] The Circuit Court of Appeals however reversed *all* findings of fact of the trial court including those which were not in issue in either court since no error had been assigned to them.[340a] The Circuit Court of Appeals went so far as to quote one of these partially admitted findings in order to prove to itself that the trial court committed error. Thus at PR. 966-967 the Court of Appeals quotes from Finding 57,[341] most of which (see Appendix D) was admitted by respondents' failure to assign error to the greater portion of it. Among the things admitted in that finding were:

> (1) The record shows many wrongs and injustices to the debtor estate committed by City National, the Bondholders' Committee and their attorneys;

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337. 244 U. S. 317 (1917).

338. PR. 769-794.

339. PR. 817-832.

340. *Magruder* v. *Drury*, 235 U. S. 106, 113 (1914).

340A. Decrees at PR. 970-971.

341. PR. 790-791.

(2) That all the equities are with the Court Trustee;

(3) That the opposing claims should be set off against each other.

Petitioner submits that the Circuit Court of Appeals departed from due process of law when it thus attacked and reversed findings of fact which stood admitted and not in issue and then proceeded without notice to write new findings of fact on questions not raised in that court. It amounted to an arbitrary and capricious refusal by that court of appeals to be bound by the record and the pleadings. The result of this technique was to

(1) Create new issues of fact and law of which petitioner had

(2) no notice and therefore could not have

(3) his "day in court" or

(4) a reasonable opportunity to prepare as counsel.

As such the action of the Court of Appeals amounted to a substantial denial of full hearing and notice, which are the essential requisites of due process of law.[342]

The Circuit Court of Appeals thus by acts of omission and commission disposed of the case in a manner which was at variance with the record and the admittedly correct findings of the trial court. Petitioner submits that this was a *capricious and arbitrary disposition of the case* and as such was in violation of due process of law as was held in the cases below cited.[342]

The uncontested findings of the trial court adequately support the judgment of that court. The most important of these admitted findings were in paragraph 11 (PR. 772); 14 (PR. 773); 16 (PR. 774); 22 (PR. 776); 25 (PR. 777-

342. *Postal Telegraph Cable Co.* v. *City of Newport*, 247 U. S. 464 at 476, (1918), where this court ruled that the Supreme Court of Kentucky denied due process of law under the Fourteenth Amendment.
Also:
Morgan v. *U. S.*, 304 U. S. 1 (1938).
Morgan v. *U. S.*, 298 U. S. 468 (1936).

778); 26 (PR. 778); 33 and 34 (PR. 780-781); 35 and 36 (PR. 781-782); 38 and 39 (PR. 782-783); 40 (PR. 783); 44 (PR. 785); 46 (PR. 786); 48 (PR. 787); 49 (PR. 787-788) and 57 (PR. 790-791).

The portions of the above paragraphs that were thus admitted are reprinted at Appendix D of this brief.

The Circuit Court of Appeals not only failed to give any meaning or effect to the findings of fact thus admitted, but reversed them.

In Response to the Fourth Question Presented and to Assignments of Error (d) and (p).

III.

A COURT OF APPEAL CANNOT OVERRULE THE FINDINGS OF FACT OF THE TRIAL COURT WITHOUT FIRST HAVING ANALYZED THE EVIDENCE UPON WHICH THOSE FINDINGS WERE BASED.

The Circuit Court of Appeals committed error when in violation of Rule 52 of the Rules of Civil Procedure it reversed the findings of fact made by the trial court.

Rule 52[343] of the Rules of Civil Procedure in part states:

> "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

Thus it appears that the Court of Appeal must, before reversing the trial court's findings of fact, determine that those findings are "clearly erroneous". This requires an analysis of the most intensive and extensive kind. It requires a deep application by the Judges of the appeal court. If after such an analysis it appears that the evidence (which was the basis of the finding of fact) was conflicting, then the Court of Appeals has no alternative, *but must*

343. 28 U. S. C. A. following Section 723c.

affirm the trial court's findings since they are not, under such circumstances, clearly erroneous.[344]

But the Circuit Court of Appeals reversed the trial court in the case at bar without such an analysis. On the question of the findings regarding the right of the respondents at bar to fees the Court of Appeals said not a thing. That court only partially examined the other half of the consolidated case;—that half having to do with the question of whether the respondents should be held liable for waste and have affirmative damages assessed against them. When the Court of Appeals came to the question of fees they merely said:[345]

> "We have concluded those findings were without substantial support * * *."

Whereupon, without analysis or discussion the Court of Appeals reversed *all* findings of the trial court.

Now respondents may claim that such an analysis was made even though the court did not perform its recordation duty[346] of dealing satisfactorily with the evidence in its opinion. But the reasoning of the opinion displays a total lack of analysis of the disclosures made in the trial court. Clear mistakes of fact (which appear throughout the opinion) were called to the attention of the Court of Appeals

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344. *Dooley* v. *Pease*, 180 U. S. 126, (1900). At pages 131-132 this court said:

> "Errors alleged in the findings of the court are not subject to revision by the Circuit Court of Appeals or by this court, if there was any evidence upon which such findings could be made."

To the same effect are:

H. H. Cross Co. v. *Simmons*, 96 F. (2d) 482, 486.
In Re Peacock Food Markets, 108 F. (2d) 453, 457.
U. S. v. *Tyrakowski*, 50 F. (2d) 766, 771.
Scavenger Service Corp. v. *Courtney*, 85 F. (2d) 825, 831.

345. PR. 453.

346. In an address before the American Bar Association, in which he dealt with the duties of courts, Professor Roscoe Pound in part said:

> "* * * it is generally felt to be important that the reasons of every judicial decision in our highest courts be set forth fully in written opinions, accessible to the profession and to the public, and that the courts should pronounce definitely upon every point raised by counsel. Here is a subject on which courts and judicial councils should be at work in the near future, if our common-law technique is not to break down." (Quoted as reprinted in XXV American Bar Association Journal, September, 1939, page 731 at 733.)

by the "Petition for Rehearing."[347] It would serve no satisfactory purpose to restate all of these mistakes here. A reference to such however may be helpful, showing as it does, the important scope of the omissions of the court of appeals. For this reason we respectfully refer the court to the "Four Salient Omissions" as contained in the petition for certiorari at pages 15 to 35 and to Appendix E of this brief entitled: "The Facts of the Case as Illustrated by Respondents' Admissions of Record in the Pleadings." Point I of the Argument as contained in this brief deals with the admissions made by respondents' witnesses in their testimony before the trial court.

Petitioner submits that the action of the Circuit Court of Appeals was so capricious and arbitrary as to be unpredictable to the point of denying this petitioner his day in court. Without contradicting or mentioning most of the material contained in the trial court's findings of fact, it overruled and reversed all findings of the District Court including those which were not denied or contested by respondents.

In Response to the Fifth Question Presented and to Assignments of Error (l), (m), (n) and (p).

IV.

A CIRCUIT COURT OF APPEALS HAS NO JURISDICTION OF AN APPEAL TAKEN IN VIOLATION OF SECTION 250 OF THE CHANDLER ACT AND PRESENTED WITHOUT A RECORD HAVING BEEN FILED AS PRESCRIBED BY RULE 73(G) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

The Circuit Court of Appeals erred in not dismissing these appeals as requested by petitioner's motions, since appeals taken by the wrong manner do not confer jurisdiction.

When respondents decided to appeal from the decision of the District Court they took two appeals, one by right

347. PR. 973-990.

and one by leave. Petitioner contends that both of these appeals were invalid and should be dismissed by the Circuit Court of Appeals for want of jurisdiction. Each of these appeals was given a separate number by the Clerk of the Circuit Court of Appeals. One was numbered 7060 and the other was numbered 6986. This petitioner made several motions in the Circuit Court of Appeals to have each of these appeals dismissed.[448] Each of these motions was denied by the court. Let us now discuss each of these appeals separately.

Appeal 7060 should have been dismissed by the Circuit Court of Appeals for failure to comply with Section 250 of the Chandler Act.

This appeal was taken by filing a notice of appeal in the District Court on June 1, 1939.[449] As such it amounted to an appeal by right. As is shown by the record it was an appeal from the Findings and Decree of the District Judge which denied respondents compensation and reimbursement for "services". Section 250 of the Chandler Act provides that such appeals are to "be taken to and allowed by the Circuit Court of Appeals * * *."[450] In the case of *Dickinson Industrial Site, Inc.* v. *Cowan*, 309 U. S. 382, decided by Your Honors last March, it was determined that Section 250 applied to such a case as the one at bar and that such an appeal could be taken only by leave of the Circuit Court of Appeals and could not be successfully taken by the filing of a notice of appeal in the District

448. Motions of September 16, 1939,—PR. 887-895.
Motion of September 26, 1939,—PR. 913-915.
Motions of November 8, 1939,—PR. 925-941.
Motion of June 22, 1940,—PR. 1013-1024.

449. PR. 796-798.

450. The complete quotation of Section 250 is:
"Appeals may be taken in matters of law or fact from orders making or refusing to make allowances of compensation or reimbursement, and may, in the manner and within the time provided for appeals by this Act, be taken to and allowed by the Circuit Court of Appeals independently of other appeals in the proceeding, and shall be summarily heard upon the original papers."

Court. As such the rule as set forth in *Shulman* v. *Wilson-Sheridan Hotel Company,* 301 U. S. 172, was affirmed insofar as it prohibited fee or compensation appeals as of right. This petitioner understands that Your Honors will again decide the question at this term of court in the case of *Reconstruction Finance Corporation* v. *Prudence Securities Advisory Group,* and that to that end certiorari was granted on June 3, 1940, at 310 U. S. 622-623.[451] Unless Your Honors determine to reverse the rule of the *Dickinson case,* it would seem that the United States Circuit Court of Appeals was plainly in error in refusing by its several orders[452] to dismiss fee appeal 7060 which had been taken as of right upon a notice of appeal filed in the District Court.

Appeal 6986 should have been dismissed by the Circuit Court of Appeals for failure to file the record as required by Rule 73(g) and otherwise.

This appeal was taken by leave of the Circuit Court of Appeals.[453] To all intents and purposes the respondents filed no record for appeal 6986.[454] Instead they chose to consolidate the record of appeal 7060 into and with appeal 6986.[455] This the Court of Appeals permitted them to do.[456] But for several reasons the record in appeal 7060 had not been filed in accordance with the law.

Reason One: The appeal record was not filed with the Circuit Court of Appeals within 40 days as provided by Rule 73(g) of the Rules of Civil Proce-

451. Reported below at 111 Fed. (2d) 37.

452. Order of October 4, 1939 at PR. 920-921.
Order of November 27, 1939 at PR. 953.
Order of July 3, 1940 at PR. 1033.

453. PR. 842-849.

454. PR. 1017. "In 6986 appellants filed only a short record consisting of decree and four items on July 1939. That was filed without leave of court, without notice to anyone, and was prepared on a special short praecipe that was never served on anyone." Court Trustee's motion of June 22, 1940.

455. PR. 876.

456. Paragraph (b) of order of October 4, 1939 at PR. 921.

dure.[457] The notice of appeal was filed in the District Court on June 1, 1939,[458] but the record was not filed until August 19, 1939.[459]

Reason Two: The 40 days expired on July 11, 1939, and respondents did not ask the Circuit Court of Appeals to extend the time for filing record of 6986 until July 19, 1939,[459-A] at which time they were already in default. Therefore on the authority of Rule 73(g)[460] and of *West* v. *Irwin* (C. C. A. 7), 54 Fed. 419, the order extending the time was void.

Reason Three: The order for the extension of time was sought and received from the Circuit Court of Appeals instead of from the District Court which by Rule 73(g) had exclusive jurisdiction over the matter of extending the time within which to file the record on appeal.[460]

Reason Four: The order of consolidation whereby the respondents sought to save their appeal by consolidating the records of the case was not asked for until September 8, 1939.[461] At this time the Circuit Court of Appeals had no jurisdiction of the case since in appeal 6986 the respondents had failed to file their record as above noted and jurisdiction was lost on July 11, 1939 and appeal 7060 had not been docketed until August 19, 1939, instead of on or before July 11, 1939 (40 days after the first notice of appeal), and also because appeal 7060 was taken as of right instead of by leave.

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457. Rule 10 of the Circuit Court of Appeals, Seventh, states:
"The record on appeal shall be prepared and the transcript filed in this court, as provided in Rules 75 and 76 of the Federal Rules of Civil Procedure."
The Rules of Civil Procedure state:
"Rule 73(g). *Docketing and Record on Appeal.* The record on appeal as provided for in *Rules 75 and 76* shall be filed with the Appellate Court and the action there docketed within 40 days from the date of the notice of appeal; * * *" etc.

458. PR. 796.

459. PR. 1027.

459-A. PR. 870-872.

460. Rule 73(g) provides for an extension of time as follows:
"* * * except that when more than one appeal is taken from the same judgment to the same appellate court, the *District Court* may prescribe the time for filing and docketing, which in no event shall be less than 40 days from the date of the first notice of appeal. In all cases *the District Court* in its discretion and with or without motion or notice may extend the time for filing the record on appeal and docketing the action, *if its order for extension is made before the expiration of the period for filing and docketing as originally prescribed* or as extended by a previous order. * * *" (Italics supplied.)

461. PR. 875.

Additional reasons why these appeals should have been dismissed were listed and discussed in the Court Trustee's motion of June 22, 1940.[462] The respondents answered that motion.[463] The answer did not tend to clarify the facts involved. Statements about motions made did not specify as to which appeal such motions related. Thus at PR. 1027 a discussion is conducted as to a motion made in the District Court. This discussion would seem to indicate that the motion had been made in reference to appeal 6986 when in fact it had been made in reference to 7060 which appeal was invalid under Section 250 of the Chandler Act and the rule of the *Dickinson Case.*

Since appeal 7060 was invalid the record filed in that appeal could have no independent validity. Even had respondents filed it within the proper time and even had they consolidated the appeals within the proper time, they could only have had a situation where a good appeal without a record (6986) had been consolidated with the record of a bad appeal (7060), and therefore if appeal 7060 had been dismissed upon this petitioner's motion, as it should have been, then such an order of dismissal would have carried with it a dismissal of that case's record. Appeal 6986 would then have been left standing alone without any record whereupon the court of appeals would be forced to either dismiss such appeal or affirm the District Court.

Petitioner submits that the Circuit Court of Appeals was without jurisdiction to hear these two appeals and that as such the opinion rendered by that court is null and void.

Petitioner also submits that the Circuit Court of Appeals committed error when it failed to retax costs in conformance with the motion of the Court Trustee.[463-A]

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462. PR. 1007-1024.
463. PR. 1025-1033.
463-A. PR. 1021-1023.

In Support of Assignment of Error Q.

V.

A BANKRUPTCY REORGANIZATION COURT HAS JURISDICTION AND POWER TO DISALLOW FEE AWARDS WHICH HAVE BEEN MADE BY STATE FORECLOSURE COURTS.

The Circuit Court of Appeals erred in ruling that the Federal District Court had no power to readjust or review and disallow the fee awards of State foreclosure court.

Throughout its opinion the Circuit Court of Appeals constantly referred to state court decrees as a justification for certain sharp practices and as an explanation of why the District Court had no jurisdiction to contest the good faith or clean hands of the petitioning fiduciary fee claimants. Thus the appeal court said,[464]

> "The amounts of $13,000 and $7,500 charged to City National in this item were paid in conformity with the decree of the Superior Court."

and

> "In order to sustain the charges in Item IV, it is necessary, of course, to hold that the proceeding in the State Court * * * was void."[465]

and

> "The state court found the amounts retained to be reasonable and approved the same by decree."[465]

Up to this point the opinion was merely dealing with the counterclaim of the trustee. Then the Court of Appeals spoke about the fees of the respondents. It spoke in terms that could no longer be misunderstood. It placed its opinion's foundation upon the state foreclosure court's fee award. After stating that the claims of City National and of the committee should be paid in full, the Court of Appeals said:[466]

> "At the commencement of the hearing, counsel for City National stated:
>
> '* * * we are willing that the court here fix the

464. PR. 961.

465. PR. 962 and also see PR. 965-966.

466. PR. 967-968.

reasonableness of the charge for services rendered by us in the state court proceedings on behalf of the Indenture Trustee, notwithstanding the existing limitations upon the Federal Court's right to review the allowance for such services made by the state court in the decree of sale.' In view of this concession, the court has the right to review *the reasonableness* of the allowances made in the state court upon which claim No. 9 is predicated. In doing so, the state court proceeding should be considered as valid and untainted by fraud."[467]

Thus the Circuit Court of Appeals held:

(1) That generally a bankruptcy court cannot readjust the fee awards of state courts;

(2) That a bankruptcy court may readjust such fee awards only if the claimant allows the bankruptcy court to do so;

(3) That the District Court never has the power as a bankruptcy court to *deny* the fee claims of parties whose claims have been allowed by a state court, but may only determine whether such an award was *reasonable*,—assuming perforce that the right to some fee existed.

How the Circuit Court of Appeals ever got the idea that the state court had allowed fees is impossible to state. Throughout the record the contrary appears and it is admitted that the state court refused to approve City Nationals accounts and said so.[468] Thus the City National Bank and Trust Company brought its accounts into the United States District Court. This "report and account" admitted the status of the state court proceedings by stating:[469]

"* * * your petitioner * * * represents to the court that the chancellor in said foreclosure proceedings in and by said decree expressly indicate(d) that by the entry thereof, he did not purport to approve any account of your petitioner as successor trustee in possession of the said premises * * *"

467. Italics supplied.

468. At PR. 128 it appears that the state court judge had written at the end of the decree the following words:

"The court by the entry of this decree does not approve the accounts of the trustee in possession of the premises involved herein."

469. PR. 115.

We see therefore that the state court had disallowed the accounts of City National, and that City National, still wishing that some court would approve them, brought them into the Federal bankruptcy court and that that court also disallowed the accounts;[470] that an appeal was taken whereupon the Circuit Court of Appeals suddenly decided that these accounts had been approved by the state court and that the District Court had no jurisdiction to disallow the accounts. Petitioner submits that respondents were probably as surprised at this as was he,[471] although they later denied it when they claimed that the opinion had not "overlooked or misapprehended" any points.[472]

Petitioner submits that even if the state court had approved the accounts of City National and the fee payments therein credited that the Federal District Court sitting as a court of equity could have disallowed such accounts and could have denied its aid to the claimants in securing the payment of such fees. Petitioner is supported in this belief by the opinion rendered by the Sixth Circuit Court of Appeals in the case of *Butzel* v. *Webster Apartments Co.*, 112 F. (2d) 362 (1940). At page 366 the court spoke of the power and jurisdiction of a court of bankruptcy to reduce the amounts to be allowed claimants who had secured their claims by state court judgments. The court then said:

> "A *fortiori*, this power is equally effective to reduce the claims for legal services rendered to the mortgage trustees and in adjusting these amounts according to principles of equity and good conscience, the court was not violating or impairing contractual obligations."

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470. PR. 789.

471. At PR. 503-504 counsel for City National *et al.*, had stated in his Federal Court testimony that,

> "In the event the court should find the City National Bank has been negligent in one way or another, or has mismanaged in one way or another *and the court surcharges its account*, I would take it for that purpose the Bankruptcy Court is sitting as *an equity court* and that the Judge has the same control over the costs and expenses of the proceeding."

472. PR. 998.

The applicable section of the Chandler Act places a duty upon the bankruptcy court to determine for itself upon equitable principles whether such fees should be paid. This section is No. 258.[473] It states that,

> "The judge shall *make such provision as may be equitable* for the protection of the obligations incured by a receiver or trustee in such prior proceeding and for the payment of the reasonable costs and expenses incurred therein *as may be allowed by the judge.*"[474]

Petitioner submits that the opinion of the Circuit Court of Appeals fails to give the necessary meaning and application to the last seven words of this Act of Congress and further fails to give the word "equitable" its necessary meaning and application to the facts of the present case. Under Point I of this Argument, petitioner has shown that according to the rules of equity relating to fiduciaries, no compensation should be allowed to the respondents since they violated and breached their trusts. Section 258 of the Chandler Act places the question of fiduciary compensation for services rendered in prior proceedings upon the same identical basis as compensation for services rendered in the bankruptcy proceeding. That basis is a compliance by such fiduciaries with the rules and principles of equity and fair dealing.

In the case of *Pepper* v. *Litton*, 308 U. S. 295 (1939), Your Honors dealt with the question of the disallowance by a bankruptcy court of a fiduciary's claim which had been reduced to judgment in a state court. Although this was not a fee claim which arose in foreclosure proceedings, it seems to this petitioner that the general principles of equity as expressed by this court in that opinion are wholly applicable to the question here under discussion. This is particularly true since that opinion deals with the jurisdiction

473. This section is derived from part of former section 77B (i) (11 U. S. C. A. Sec. 207(i)).

474. Italics supplied.

and power of the bankruptcy court to disallow judgment claims based upon salary obligations of the bankrupt to its fiduciaries. As in the case at bar:

> "Nor was there presented to the state court the question of whether or not the * * * judgment might be subordinated to the claims of other creditors upon equitable principles."[475]

Your Honors then called attention to the fact that the judgment creditor had voluntarily submitted his judgment claim to the bankruptcy court for allowance and that such action plainly gave the bankruptcy court jurisdiction and power to subordinate or disallow it.[476] The opinion then states that a court of bankruptcy is a court of equity,[477] and as such may inquire into the essential liability behind the judgment for purposes of proof and allowance.[478] Speaking of the right of a bankruptcy court to disallow such fiduciary judgment claims Your Honors said:[479]

> "And that result may be reached even though the salary claim has been reduced to judgment. It is reached where the claim asserted is void or voidable because the vote of the interested director or stockholder helped bring it into being or where the history of the corporation shows dominancy and exploitation on the part of the claimant.[480] It is also reached where on the facts the bankrupt has been used merely as a corporate pocket of the dominant stockholder, who, with disregard of the substance or form of cor-

475. 308 U. S. at pages 302-303.

476. 308 U. S. at page 303.

477. 308 U. S. at pages 304-305.

478. 308 U. S. at pages 305-306.

479. 308 U. S. at pages 309-310.

480. PR. 780-781, Par. 33. The trial court found that:
"From October, 1932, the City National assumed and exercised real control over Granada affairs. * * * An order was secured * * * on motion of Granada Bondholders' Committee to appoint City National * * * successor trustee under the trust deed."
PR. 783, Par. 40. The trial court found that:
"The committee has been at all times dominated and controlled by City National."

porate management, has treated its affairs as his own."[481]

Your Honors then indicated that the consideration for the disallowance of such a claim

> "* * * may be simply the violation of rules of fair play and good conscience by the claimant;[482] a breach of the fiduciary standards of conduct which he owes the corporation, its stockholders and creditors.[483] He who is in such a fiduciary position cannot serve himself first and his *cestuis* second. He cannot manipulate the affairs of his corporation to their detriment and in disregard of the standards of common decency and honesty.[484] He cannot by the intervention of a corporate etity violate the ancient precept against serving two masters."[485]

Your Honors then stated that:[486]

> "Where there is a violation of those principles, equity will undo the wrong or intervene to prevent its consummation."

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481. At Par. 46, PR. 786, the trial court found:
"City National (self-appointed by its own committee) claimed to be trustee under the 1928 first mortgage trust deed, but it dealt with Debtor property as though it were the general owner of all Granada affairs. The fullest control was taken over all manner of personal property including notes and other securities representing general moneys due the Debtor Estate. In practice City National made itself general trustee far beyond any supposed authority under the order of Superior Court."

482. Uncontested finding of trial court, paragraph 57, PR. 790-791:
"The court does not intend to minimize, but does recognize the many wrongs and injustices to the debtor estate shown by this record, which have been committed by City National, by the Bondholders' Committee and by their attorneys and counsel; the court finds that all equities are with the Court Trustee. * * *"

483. At Par. 44, PR. 785, the trial court found that:
"As each suit came to adverse determination, a new one was begun in the name of some new Trust Company or some new nominee, whose name was used in some new suit or some new court *to delay, embarrass and harass creditors* of the estate." (Italics supplied.)

484. At Par. 42, PR. 784, the trial court found:
"Instead of reorganizing three properties as a unit or resigning from two of the trusts, City National officials at the beginning of 1934 consummated a course of action which had been planned for a year, by charging off a balance of Four Thousand Eighty Dollars ($4,080) that had been regularly billed to Arlington and placed upon the Granada books of account for heat, hot and cold water and refrigeration services furnished by Granada during the year 1933."

485. For a list of the masters served see pp. 64-70 of this brief.

486. 308 U. S. 311.

We have seen that in the case at bar the District Court found that there had been a violation of those principles of equity relating to fiduciary duties. The record is replete with citation and recitation of these breaches of trust conduct. As a result of such proof and findings the trial court disallowed the fee claim of the respondents for alleged services rendered in prior state court foreclosure proceedings. Petitioner submits that even if such fee claim was hidden behind a state court judgment that the trial court, as a court of bankruptcy and of equity, had full power and authority to readjust or disallow the claim and that the Circuit Court of Appeals was in manifest error in holding otherwise.

In Conclusion.

This petitioner submits that the District Court did not abuse its judicial discretion in denying fees to the respondents. As a bankruptcy reorganization court it sat as a court of equity. The admissions made by the pleadings, and by the testimony of respondents and their witnesses, showed such a lack of trust loyalty, that the District Court, acting within the scope of its discretion, correctly saw fit to disallow fees to the respondents.

That part of the opinion of the Circuit Court of Appeals which deals with the Court Trustee's counterclaim,[487] ignores the realities of the situation, when it states that City National was not trustee of Granada until January 3, 1935,[488] despite the fact that two high ranking officers of City National[489] had admitted that City National from October 5, 1932, the date it was organized,[490] had "serv-

487. PR. 955-966.

488. PR. 960.

489. Mr. Leonard, Vice-President in charge of City National Trust Department (PR. 230) and Mr. Bickel, assistant Trust Officer (PR. 183).

490. PR. 183.

iced" the Granada trust even though Central Republic was nominally trustee of record.[491] Thus City National *acted* as trustee and as such operated the Granada trust, and all Granada property. When these witnesses state that City National "serviced" the Granada trust, they established that City National acted as trustee long before it took over the property "formally on the record, in January 1935."[492] City National regarded Central Republic as one of its own departments. Central Republic was a department that sent trust business to City National, but sought not to send liability for trust mismanagement along with the business. The extent of City National's attitude, that Central Republic and City National were one and the same thing, is shown by the fact that City National presumed to act as depositary in the Granada Matter, under the deposit agreement signed only by Central Republic.[493] City National did not assume this depositary business by virtue of any new agreement or by any order of court, but acted as depositary after receiver was appointed for Central Republic,[494] and until the matter came into the Federal District Court. City National's lawyers treat City National and Central Republic as being one and the same thing when they testify that *City National* was appointed depositary by virtue of this deposit agreement[495] which agreement only purported to appoint *Central Republic* as depositary. A part of the fees requested by City National were for their services as "depositary." Petitioner has searched the record diligently and cannot find any agreement or court order which purports to appoint City

491. Testimony of Mr. Leonard, PR. 230-230.
Testimony of Mr. Bickel, PR. 195-196 and 415.

492. PR. 196.

493. PR. 9-50.

494. November 20, 1934, PR. 958.

495. City National's counsel testified:
"We were requested to and did prepare a deposit agreement, which was dated April 25, 1933, under which City National Bank and Trust Company was named as depositary * * *."

National as depositary. Petitioner asks respondent to show this court by what authority it acted as such depositary, and by what authority it claims fees.

The breaches of trust shown throughout this printed record (which was abstracted and prepared by the respondents) are sufficient reasons why fees and expenses should have been denied to all of the respondents. The Chandler Act and its predecessor, Section 77B, were designed by Congress to reduce the amount of fees paid in bankruptcy proceedings to professional reorganizers. In the petitioner's reply to the answer filed by respondents to his petition for certiorari he showed that the Chandler Act's purpose has been thwarted by the Seventh Circuit Court of Appeals, and that as the record then stood (September, 1940) this Circuit Court of Appeals had increased fees in seventeen corporate reorganization cases, and had decreased fees in only two cases. The case at bar was one of the seventeen cases wherein the Circuit Court of Appeals reversed the District Court and ordered higher fees paid to committees, trustees and lawyers.[495a] That this new policy and attitude of the Circuit Court of Appeals is at war with the historic policy and attitude of that court is clearly shown by the opinion rendered *in 1900* by this Circuit Court of Appeals for the Seventh Circuit in the case of *In Re Curtis*, 100 Fed. 784, when the court said at page 795:

> "We think, however, that the dignity and honor of the profession are not conserved, or its influence for good promoted, by excessive allowance for service. That would lend countenance to the suggestions sometimes heard that the commercial spirit of the age has invaded even the legal profession, to the impairment of its dignity, the blunting of its sense of honor; and that a profession instituted for the maintenance of justice has become degenerate, and that its main calling now is a vulgar scramble for the 'Almighty dollar'."

This petitioner submits that so far as the case at bar is concerned the charge that "the commercial spirit of the

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[495-A.] For a comprehensive list of these cases see the chart at the end of the reply filed by petitioner on September 28, 1940 in this court.

age has invaded even the legal profession" amounts to a gross understatement. For ten years Granada bondholders have, through no choice of their own, and without a disclosure of the true facts being made, been forced to pay for useless litigation which was engaged in only to protect bankers and others from the liability of their own dishonesty. Indeed,—"the commercial spirit of the age" has not only invaded a portion of the legal profession but in some instances members of the legal profession have captured and glorified this commercial spirit, to the abolishment of ethics and fiduciary duty.

The breach of trust charts at pages 64-69 of this brief fully disclose the extent of the infiltration of market place morals into the ways of thought and conduct of fiduciaries. Shrewdness, sharpness and shadiness have displaced loyalty as the guiding, ever present sign of the trust relationship. Not only is social conscience a lost attribute but conscience of any description has almost become a thing of the past. The corporate fiduciary at bar has displayed no conscience and it should have no fees. Its self-created committee is without any independent moral perception. It should not be paid. The lawyers served many masters. They did not serve the bondholders. The bondholders should not pay them for services not received nor for the detriment caused to the bondholders by them. As one court has said:[496]

> "There is a manifest injustice and inequity in taking out of a fund or property in the custody of a court compensation for the services of an attorney or for the service of any other party by means of which the fund or property has been taken or kept from its true owner. The latter ought not to be required to pay for services which have been a positive detriment to him."

More than this, breaches of trust by fiduciaries can be stopped only by a definite judicial policy of refusing to allow, for want of equity any claims made by such unfaithful fiduciaries.

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496. The Eighth Circuit Court of Appeals in *Gillespie* v. *Piles & Co.*, 178 Fed. 886 at 892 (1910).

Prayer for Relief.

Wherefore, petitioner prays that those portions of the decree[496-A] and findings of the District Court[497] which were appealed from by the respondents, be affirmed, and that the decrees[498] and opinion[499] of the Circuit Court of Appeals be reversed, to the end that all fees and expenses be *denied* to City National Bank & Trust Company of Chicago, as former trustee, to the Granada Bondholders Committee, and to Defrees, Buckingham, Jones & Hoffman, as counsel for City National and as counsel for the Committee, that all costs in all courts be assessed against the respondents, that the cause be remanded to the District Court to determine, assess and enter judgment against the respondents for said costs, and for such relief as to this court may seem meet.

Weightstill Woods,
Attorney for Petitioner.

496-A. PR. 794-795.
497. PR. 769-794.
498. PR. 970-971.
499. PR. 955-969.

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APPENDIX "A".

Litigation Chart.

A Decade of Litigation (1928-1938).

Year	Title	Citation	Nature of Case
1928	*Albert Pick & Co. v. Granada Hotel Corp.*	Circuit Ct. of Cook Co.	Foreclosure on chattel mtge. on Granada furniture.
1928	*Wendstrand* v. *Pick & Co.*	U. S. District Court	Complaint for injunction to stop sale of furniture. Denied.
1930	*Wendstrand* v. *Pick & Co.*	38 F. (2d) 25	Appeal to C. C. A. 7th. Affirmed.
1930	*Wendstrand* v. *Pick & Co.*	281 U. S. 768	Petition for Writ of Certiorari denied.
1930	*Pick & Co.* v. *Indemnity Insurance Co. of North America*	U. S. Dist Ct.	Suit on bond in Wendstrand suit. $60,000 damages demanded.
1930	*People* v. *Granada Hotel Corp.*	50985 in Superior Court of Cook Co.	Dissolution of corporation by Atty. General of Illinois.
1930	*Thuma* v. *Granada Apts. Inc.*	519151 in Superior Court of Cook Co.	Partial foreclosure. (1928 2d Mtge. Bonds).
1933	*Appeal of Pick & Company*	269 Ill. App. 484	Determination of whether furniture was part of Real Estate. Held to be personal property.
1935 March	*Tuttle* v. *Harris*	U. S. Dist. Ct. No. 59143	Reorganization proceeding against old Granada Hotel Corp. Dismissed on May, 1937 on mandate from Supreme Court.
1935 April	Second Petition for Reorganization	U. S. District Court	Reorganization against Granada Apts. Inc. Dismissed in May, 1937 by Judge Barnes.
1935	*Tuttle* v. *Harris*	No. 5488 in C.C.A. (7th)	Appeal on question of whether foreclosure receivership was act of bankruptcy. Held: Yes.
1936	*Tuttle* v. *Harris*	297 U. S. 225	Supreme Court held that this was not an act of bankruptcy. Reversed.
1937	*Rosenberg* v. *Granada Apts., Inc.*	Mun. Ct. of Chicago No. 2778211	Suit on Bond delinquency. Judgment entered 3-8-37. No. 4630.
1937	*Rosenberg* v. *Granada Apts., Inc.*	Cir. Ct. Cook Co. No. 37C3704	Suit for Appointment of receiver. (Creditor's Bill.) Receiver appointed 4-14-37.
1937	*In re Granada Apartments, Inc., Debtor.*	U. S. Dist. Ct., Danville, Ill.	Involuntary pet'n for reorganization under 77B proceedings. This was consolidated with next action below.
1937	*In re Granada Apartments, Inc., Debtor.*	U. S. Dist. Ct., Chicago, No. 65811	Voluntary pet'n for reorganization under 77B. (Danville pet'n transferred to Chicago to be heard with this case).

This chart is based upon the testimony of respondents' attorney (PR. 473-504).

APPENDIX "B".

Former Fiduciaries.

CHICAGO TRUST COMPANY	Original "house of issue" of Granada bonds (1924) and co-sponsor with the Cody Trust Company of the (1928) issue. Author of the two prospectuses which represented that furniture was security for bondholders. Trustee under 1924 and 1928 Trust Deeds. Consolidated with Central Trust Company in July of 1931.
CODY TRUST COMPANY	Formed in 1928 by the Codys, Riddle and others as a new house of issue. Co-sponsors with the Chicago Trust Company of a new first mortgage (1928) and second mortgage bond issue. Officers of this company were officers of Granada Apartments, Inc. from 1929 to 1934 and as such controlled all policies. Cody Trust Company has been dissolved.
CHICAGO TITLE & TRUST CO.	Was appointed nominal receiver of Granada under the Thuma partial foreclosure of June, 1930. Order of appointment provided it could not disturb the (Cody) management in control. This disability was later (Jan. 12, 1934) removed. Relinquished receivership to Central Republic March 22, 1934.
CENTRAL TRUST COMPANY	Partner with Chicago Trust Company in the consolidation of July, 1931.
CENTRAL REPUBLIC BANK AND TRUST COMPANY	The name assumed by the consolidated company. It became the successor trustee under the 1928 trust deeds.
CENTRAL REPUBLIC TRUST CO.	The new name assumed by the Central Republic Bank and Trust Company after that organization eliminated its deposit banking business which was taken over by City National Bank and Trust Co., on October 5, 1932. It became the successor to the Successor Trustee.

This chart is based upon the findings of fact of the trial court at PR. 769-793.

Former Fiduciaries—(Continued).

CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO	Former Trustee in the Superior Court foreclosure proceedings, and present Granada Depository and Transfer Agent as appointed by the Federal District Court. Was claimant and counter-claim defendant in the court below where charges of mismanagement and preference by City National, were made by the Court Trustee, and is respondent herein.
THE CORPORATE REORGANIZATION DIVISION	A department at the City National Bank and Trust Company, which was a business getting device for that bank. Officers and employees of this department were members of the Granada Bondholders' Protective Committee. By this department 425 corporate reorganizations have been secured for City National.
GRANADA BONDHOLDERS PROTECTIVE COMMITTEE	Formed by and including officers of the City National Bank and Trust Company of Chicago, who as members of "the Committee" named City National as Trustee in the state court proceedings.

APPENDIX "C".

Apartment Hotel Corporations.

GRANADA HOTEL CORPORATION	Predecessor of the debtor. Incorporated by Fred Mateer in 1924. Signer of bond issues. Dissolved by Attorney General in 1930.
GRANADA APARTMENTS, INC.	The debtor herein which filed its petition for 77B proceedings on April 23, 1937. Organized by Cody Trust Co. in 1929 as a hedge against the Pick claim which was not assumed by this new corporation.
GRANADA APARTMENTS HOTEL CORPORATION	Successor of the debtor herein.
THE GRANADA PROPERTY	A hotel-apartment house located at 525 Arlington Place, Chicago, Illinois. The chief possession of three successive Granada corporations, and several receivers and trustees. Furnished in 1924 with $120,000 worth of furniture. Owner of central heating, refrigeration, and water plant for other hotel properties.
ARLINGTON, INC.	The new corporation which owns the hotel-apartment house located at 530 Arlington place, across the street from Granada; former lessee of services from Granada heating and refrigeration plant. Built in 1924 by Mateer. Reorganized in Circuit Court of Cook County.
LINCOLN PARK MANOR HOTEL 500 Fullerton Parkway Corporation	A hotel-apartment house located on Fullerton Avenue across the alley to the rear of Granada, also a Mateer development, former and present lessee of heat, water and refrigeration services from Granada. Built in 1924.

This chart is constructed from the testimony of respondents' attorney (PR. 473-504) and from the trial court's findings (PR. 769-793).

APPENDIX "D".

Findings of Fact by the Trial Court to Which Respondents Did Not Assign Error.

Paragraph of the court's findings	Record	Portion of the Paragraph Admitted
1	R. 406, PR. 769	All of paragraph.
2	R. 406, PR. 769	All of paragraph, except the words "under Chapter II and X of amended law."* [Not argued by respondents.]
3	R. 406, PR. 769	All of paragraph.
4	R. 406, PR. 769-770	All of paragraph, except words "to defend, and is now carrying on this litigation by order of the court."* [Not argued by respondents.]
5	R. 406, PR. 770	All of paragraph.
6	R. 407, PR. 770	All of paragraph.
7	R. 407, PR. 770-771	All of paragraph.
8	R. 407, PR. 771	All of paragraph.
9	R. 407, PR. 771	All of paragraph.
10	R. 408, PR. 771-772	All of paragraph, except words "The Judge deems that application of Chapter II and Chapter X of bankruptcy amendments approved by the President June 22, 1938, to this litigation is practicable and desirable. The decree herein shall so provide."* [Not argued by respondents.]
11	R. 408, PR. 772	All of paragraph including "a copy of the prospectus upon which the Granada bonds were sold is in this record. It specifically states that the furniture and fixtures at Granada are part of the security for the bondholders' money, in addition to the real estate at Arlington Place, consisting of land and hotel building."
12	R. 408, PR. 773	All of paragraph except the words, "Mr. Mateer owned the corporate stock."* [Not argued by respondents.]
13	R. 408-409, PR. 773	All of paragraph.
14	R. 409, PR. 773	"Granada Hotel Corporation, an Illinois Corporation, (not the debtor) was organized and signed the bonds marketed in 1924 by the Chicago Trust Company as a house of issue. * * * Albert Pick & Company of Chicago supplied the furniture on open account and chattel mortgage * * * what became of that much furniture is not shown by the record."

* Although specified as error, this point was not discussed in respondents' briefs in the Circuit Court of Appeals.

Paragraph of the court's findings	Record	Portion of the Paragraph Admitted
15	R. 409, PR. 773-774	None of paragraph.
16	R. 409, PR. 774	"A prospectus was issued by Chicago Trust Company, and a separate one by Cody Trust Company. Both of these documents are in the record; they repeat the announcement made to the bondholders in 1924, that the security includes the furniture and fixtures at Granada Hotel." (This related to the new refinancing in 1928 which was also admitted.)
17	R. 409-410, PR. 774	All of paragraph except words "In the Wenstrand suit in this court bonds were given of $5,000, $20,000 and finally $40,000 to stay the sale."* [Not argued by respondents.]
18	R. 410, PR. 774-775	All of paragraph.
19	R. 410, PR. 775	All of paragraph except words "To protect those who initiated the bond issue and sold the bonds, another employee or nominee of Cody Trust named Thuma, was now used to file on June 10, 1930, a suit for partial foreclosure in the Superior Court of Cook County upon a claim of default upon certain interest coupons of the 1928 second mortgage Granada issue."* [Not argued by respondents.]
21	R. 410-411, PR. 776	All of paragraph.
22	R. 411, PR. 776	"There was no assumption (by Granada Apartments, Inc.) of furniture indebtedness. This was expressly excluded along with claims of all the general creditors of the Granada Hotel corporation. Having made the 1928 issue in this manner, the bankers used some of it to retire the 1924 issue, but did not pay off the furniture indebtedness."
23	R. 411, PR. 776-777	"This Granada Apartments, Inc., from its beginning was officered by employees of Cody Trust Company, and was wholly under its control."
24	R. 411-412, PR. 777	"Indemnity Insurance Company of North America wished to be released from all those damage claims and suits. * * * Since then Seventy-five Hundred ($7500) Dollars additional has been paid from Granada funds in reduction of the receiver's certificate. * * *"

* Although specified as error, this point was not discussed in respondents' briefs in the Circuit Court of Appeals.

Paragraph of the court's findings	Record	Portion of the Paragraph Admitted
25	R. 412, PR. 777-778	"For said $4,000 face balance and interest, a claim was made in this court against Debtor estate. * * * The Superior Court was not informed about the damage claims and proceedings on the Wendstrand and appeal bonds * * * it was not known (to any court or Granada creditors) that officials of Cody Trust Company and Wendstrand had agreed to purchase the receiver's certificate if it was not paid off out of Granada funds; nor was it known * * * that Wendstrand and others are indemnitors upon all the Wendstrand bonds in this court."
26	R. 413, PR. 778	"* * * that Codys and the Chicago Trust Company both had represented to the bondholders and the public through the mails in 1924 that furniture and personal property at Granada was part of the security; and that Cody Trust Company and Chicago Trust Company had made the same representation again in 1928 in relation to the refinancing * * *."
27	R. 412, PR. 779	All of paragraph.
28	R. 412-413, PR. 779	"The last interest paid to any bondholders was to pay first mortgage coupons for 1931. * * * None has been paid since."
29	R. 413, PR. 779	"All the litigation prior to August 1933, had affected only the second mortgage trust deed. In that month the cross bill to foreclose the first trust deed was filed; and immediately this receivership certificate was asked for. * * * Decree of foreclosure was not entered until December 18, 1936, which was more than forty months later."
30	R. 413, PR. 779	None of paragraph.
31	R. 413, PR. 779-780	"* * * the main and controlling purpose of I. I. C. N. A. in advancing $11,500 was to save itself from liability in said damage suit, and secure release of same. This was accomplished by a stipulation for dismissal filed in this court, signed not only by Albert Pick & Company, but also by respondent and International & Industrial Securities Corporation, to whom this Granada money was paid."
32	R. 413-414, PR. 780	All of this paragraph except words, "Nominees of Cody Trust Company operated the property until January, 1934."* [Not argued by respondents.] And "At that time school tax warrants owned by Granada needlessly were sold at a discount."

* Although specified as error, this point was not discussed in respondents' briefs in the Circuit Court of Appeals.

Paragraph of the court's findings	Record	Portion of the Paragraph Admitted
33	R. 414, PR. 780-781	"At that time (March 1934) until the Central Republic Trust Company went into receivership near the end of 1934, the City National Bank and Trust Company furnished the personnel and service on the trusts including the Granada matter, as to which the Central Republic Trust Company was nominal trustee." "When Central Republic * * * went into receivership an order was secured * * * on motion of Granada Bondholders Committee to appoint City National * * * as * * * successor trustee. * * * The Bondholders Committee filed a petition requesting that action by the court."
34	R. 414, PR. 781	"It (the Bondholders Committee) had been organized in April 1933, by and among minor officers, employees and nominees of City National Bank and Trust Company."
35	R. 414, PR. 781	"It is admitted by the pleadings and in evidence here that Mr. Hall was so retained to represent and to keep informed the Cody Trust Company and their successors in interest. When the Court took possession of the property, claims were filed upon Granada bonds of the 1928 issue of second mortgage (by) * * * Cody Trust Company."
36	R. 414-415, PR. 781-782	"The records show that the attorneys whom they (City National) now retain, have been active in all these matters since 1924, and have had to do with most of these litigations. It does not appear that City National or anyone tried at any time to, have the Codys or the Cody Trust Company or its officials, or the Chicago Trust Company, or its officials, or any successors or receivers for them, or Wendstrand and the other indemnitors on the court bonds that were released by buying the Pick furniture the second time with bondholders' money, and buying new furniture from LaSalle Furniture and Supply Company when Pick & Company took away part of the furniture, to have any of these persons perform their promises and duty to the Granada property and the Granada Bondholders."
37	R. 415, PR. 782	None of paragraph.
38	R. 415, PR. 782-783	"At date of its charter, October 5, 1932, City National took over from Central Republic Bank and Trust Company, and now continues as part of its trust department a personnel organized and called the Corporate Reorganization Division."

Paragraph of the court's findings	Record	Portion of the Paragraph Admitted
39	R. 415-416, R. 783	All of paragraph including "The Lincoln Park Manor is still in process in that court. For it there is a similar City National Bondholders Committee. City National was trustee for both Arlington and Lincoln Park Manor."
40	R. 416, PR. 783	"The Committee when formed by City National included representation from Cody Trust Company, * * * The minutes produced in this court to show what action was taken by the Granada Committee, do not show that any constructive action was ever taken looking toward a reorganization of the Granada property. The only matter recorded prior to discussion of the present proceedings in this court was refusal to accept an offer of twenty cents per dollar face value for the bonds on deposit with the committee and City National as its depositary."
41	R. 416, PR. 783-784	None of paragraph.
42	R. 416, PR. 784	None of paragraph.
43	R. 417, PR. 784-785	None of paragraph.
44	R. 417, PR. 785	"(one set of attorneys) have prepared the financial papers and (represented) Chicago Trust Company, Thuma, and also * * * Central Republic Trust Company, and City National Bank and Trust Company and the Bondholders Committee for Granada property."
45	R. 417, PR. 785-786	None of paragraph.
46	R. 417-418, PR. 786	* * * "In present reorganization case, City National and said attorneys filed in writing objection and motion to dismiss on May 17, 1937, in an effort to thwart and stay all action by this court."
47	R. 418, PR. 786-787	None of paragraph.
48	R. 418, PR. 787	"City National Exhibit 'X' was prepared by Defrees, Buckingham, Jones and Hoffman, attorneys. They are in this court in this accounting litigation, representing City National, the Granada Bondholders Committee and a separate accounting suit against Arlington, Inc. * * * They filed the Thuma partial foreclosure on the Granada property in 1930. * * * At that time these attorneys withdrew as counsel for Thuma, and immediately appeared on the opposite side of the record as counsel for Chicago Trust Company, then for the Bondholders Committee, and then for City National. These attorneys have represented throughout, the Bondholders Committee for the Granada, the Arlington and the Lincoln Park Manor properties, and likewise the City National as Trustee for these properties."

Paragraph of the court's findings	Record	Portion of the Paragraph Admitted
49	R. 418-419, PR. 787-788	"Neither the attorneys nor the Bondholders Committee, nor the City National presented any plan at any time to the bondholders or anyone else for the joint operation or unit reorganization of the three properties. * * * From that time (May 1929) until now these properties were bondholders equities. No person in a confidential relationship to one of these properties could rightfully represent another."
50	R. 419, PR. 788	None of paragraph.
51	R. 419, PR. 788	"After 1931 no interest was paid to first or second mortgage bondholders: the tax bill unpaid rose from about $30,000 in 1931 to about $60,000 in May 1937."
52	R. 419, PR. 788	None of paragraph.
53	R. 419, PR. 788-789	None of paragraph.
54	R. 419, PR. 789	None of paragraph.
55	R. 419-420, PR. 789-790	None of paragraph.
57	R. 420, PR. 790-791	"The court does not intend to minimize, but does recognize the many wrongs and injustices to the debtor estate shown by this record, which have been committed by City National, by the Bondholders Committee and by their attorneys and counsel; the court finds that all equities are with the Court Trustee; but the court believes that justice to all concerned will be rendered more speedily if the opposing claims and contentions are set off against each other. * * *"
58-72	R. 421-422, PR. 791-793	None of these paragraphs.

[Respondent's Assignment of Errors upon which this Digest is based is to be found at pages 817 to 832 of the Printed Record. The findings of the District Court are at pages 769 to 795 of the printed record.]

APPENDIX "E".

Facts of the Case Shown By Admissions of Record in the Pleadings By Respondents.

Admissions by City National by Pleadings as Indenture Trustee.

(1) That claim is against "Granada Hotel Corporation" and not against "Granada Apartments, Inc., poration, debtor herein. (PR. 79, par. 2.)

(2) That as trustee, City National allowed its predecessor trustee, Central Republic Trust Company, to be forever discharged from any and all liability for breaches of trust in relation to Granada. (PR. 114.)

(3) That the Superior Court decree expressly disapproved the accounts of City National as successor trustee. (PR. 115, compare with assertion at PR. 80 and at PR. 141.)

(4) That the furniture was not paid for out of the proceeds of the first mortgage. (PR. 117.)

(5) That the Cody Trust Claim is invalid. (PR. 120.)

(6) That it seeks to charge debtor $3,857 for objecting to the bankruptcy jurisdiction of the United States District Court. (PR. 121.)

(7) That it paid one Edward Hall $50.00 per month out of debtor's funds for purpose of keeping the Cody Trust Company "informed". (PR. 116.)

(8) That it failed to pay several current bills of the debtor which failure necessitated payment by the Court Trustee. (PR. 122.)

Admissions by Pleadings by the Bondholders' Committee.

(1) That it was organized and has functioned since April 25, 1933. (PR. 156.)

(2) That it solicited the depositing of bonds. (PR. 156-157.)

(3) That the members of the committee served without compensation; they being in the employment of City National. (PR. 159.)

(4) That since 1932 City National has had a special department of bank employees who were paid by City National, but whose services were charged to these committees. (PR. 159.)

(5) That the committee has since 1933 used the personnel, employees and facilities of City National. (PR. 159.)

(6) That the members of the committee were employed by City National "not as members of any committee, but as employees or officers devoting their time to the Reorganization Division of City National Bank and Trust Company of Chicago." (PR. 159.)

(7) That the committee then "retained" City National as Depositary and otherwise. (PR. 159.)

(8) That it was really the reorganization department of City National and not the committee that performed services and functions of the ordinary and usual committee. (PR. 161.)

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

Nos. 281-282

In the Matter of

GRANADA APARTMENTS, INC.,

Debtor.

WEIGHTSTILL WOODS, COURT TRUSTEE,

Petitioner,

vs.

CITY NATIONAL BANK AND TRUST CO. OF CHICAGO, AND OTHERS,

Respondents.

REPLY BRIEF FOR PETITIONER.

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INDEX TO REPLY BRIEF FOR PETITIONER.

PAGE

Argument:

I. In Reply to Respondents' "Statement of the Case" 1

Misconduct by Respondents in this litigation 8

II. The Respondents did not faithfully discharge their duties as fiduciaries and they are not entitled to compensation 8

Cases cited by Respondents 12

No disclosure was ever made by Respondents 17

In answer to Respondents' query at page 56 20

III. The Circuit Court of Appeals reversed the uncontested findings of the trial court 24

IV. The Circuit Court of Appeals failed to analyze correctly the evidence. Its opinion violates Rule 52 of the Rules of Civil Procedure 26

V. The Court of Appeals erred in denying the Court Trustee's Motions to Dismiss 26

VI. The Circuit Court of Appeals ruled that the United States District Court was without power to disallow fees mentioned by the decree of the state court 27

In Conclusion 28

Prayer for relief 30

Appendix "A" (Respondents' witnesses were correctly quoted and the proper meaning attributed to their testimony by Petitioner's Original Brief. The objections stated by Respondents at pages 38 to 55 of their brief are "posed objections" insincerely made, and lacking in substance) 31

TABLE OF CASES.

Cromwell v. Curtis, 99 F. (2d) 810 12
Dickinson Industrial Site v. Cowan, 309 U. S. 382 27
Edwards v. Lane, 331 Ill. 442 (1928) 19
French v. Hall, 84 N. E. 438 (Mass. 1908) 14
Indemnity Insurance Company v. Granada Apartments, Inc., 104 Fed. (2d) 528 23
In Re Kramer's Estate, 15 N. Y. S. (2d) 700, 702 15
In Re Milwaukee Lodge No. 46, B. P. O. E., 83 F. (2d) 662 (C. C. A. 7) 13
In Re Peacock Food Markets, 108 Fed. (2d) 453 26
Jackson, Receiver v. Smith, 254 U. S. 586 (1920) 16, 17
Kuhn, Loeb & Co. v. Paramount Publix Corporation, 83 F. (2d) 406 13
Lima First American Co. v. Graham, 6 N. E. (2d) 33 14
Meinhard v. Salmon, 249 N. Y. 458, 464; 164 N. E. 545 19
Nonnast v. Northern Trust Company, 374 Ill. 248, 29 N. E. (2d) 251 (1940) 18
Roberts v. Michigan Trust Co., 262 N. W. 744 (1935) 15
Savenger Service Corp. v. Courtney, 85 Fed. (2d) 825 26
Springfield Safe Deposit & Trust Co. v. First Unitarian Society, 200 N. E. 541 (Mass.) 14
State Bank & Trust Co. v. Commercial Trust & Savings Bank, 300 Ill. App. 435, 21 N. E. (2d) 157 22
Tuttle v. Harris, No. 59143, U. S. D. C., March, 1935 ..... 4, 35
Tuttle v. Harris, No. 5488, C. C. A., 1935 4
Tuttle v. Harris, U. S. Supreme Court, 297 U. S. 225, (1936) 4
United States, ex rel. Willoughby v. Howard, 302 U. S. 445 4
Wenstrand v. Pick & Co. 3

Texts Cited.

Restatement of the Law of Trusts, Sec. 170-Q 17

Statutes.

Bankruptcy Act:
Section 77B (c) (9), 11 U. S. C. A. 13
Section 207 (c) (9) 13
The Chandler Act:
Section 250 11
The Uniform Trusts Act:
Section 6 16

Rules.

Rule 52 of the Rules of Civil Procedure 26

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vs.

CITY NATIONAL BANK AND TRUST CO. OF CHICAGO, AND OTHERS,

Respondents.

To the Honorable Justices of the Supreme Court of the United States:

Petitioner respectfully makes reply as follows:

I.

In Reply to Respondents' "Statement of the Case".

Respondents' "Statement of the Case"[1] is a 20 page attempt to organize in confusion the essential facts of the case. It is a clever presentation of assertions which could not be made in any other part of the brief. By calling it a "chronological record statement"[2] Respondents

1. Pages 1-22 of Respondents' Brief.
2. Page 1 of Respondents' Brief.

attempt to justify narrative presentation of disconnected subject matter. Respondents have attempted to make a simple case again complex;[3] to disarrange some facts, to misstate others, and intersperse mere assertions to confuse the evidence pertaining to all admitted findings.

Respondents' "Statement of the Case" (1) *argues* about the trial court's findings of fact, although said findings stand admitted by Respondents' failure to assign error, and (2) makes untrue statements in the form of mere conclusions and explanations by counsel, which are outside of the record and are not supported by any record references.

Examples of the technique involved in this "Statement of the Case" will suffice to prove its real nature.

(1) *The 1924 prospectus.* At page 3 of their brief Respondents say that the 1924 prospectus did not state that the furniture was a part of the security for the bond issue. They refer to page 334 of the printed record. Examination of that document and its photo illustrations refutes above statement by counsel for Respondents. The furniture is described in glowing terms, and also is illustrated by pictures. The trial court's finding that the 1924 prospectus does pledge the furniture as security for the bondholders,[4] was not assigned as error[5] by Respondents but was thus admitted by solemn record.

(2) *The 1928 prospectus and the Respondent Attorneys' knowledge thereof.* At page 5, paragraph 2 of their brief, Respondents in regard to the 1928 Chicago Trust Company prospectus say:

"* * * the fact is that the attorney respondents did

3. PR. 986-987, "Petition for Rehearing."
4. PR. 774, Finding 16.
5. See page 98 of Petitioner's original brief at paragraph 16.

not learn of the contents of the circular until it was produced at the trial * * *."

This statement is a mere assertion without record reference. The assertion is untrue. One of the respondent attorneys testified at the trial, that his firm was the general counsel for the Chicago Trust Company,[6] that his firm had handled the out of court Granada reorganization in 1929, and had assembled a "Green Book" of documents at that time. Respondents ask your Honors to believe that this client issued a prospectus on bond issues involving $885,000[7] without having even shown the prospectus to its general counsel. Whether or not Mr. O'Brien knew, other members of his firm had the duty to know.

(3) *Knowledge of the Wenstrand, Riddle and Cody Indemnity Agreement.* At page 10 of their brief respondents' attorneys state that they did not know of the indemnity agreement until it was disclosed in the Granada trial in 1937. The duties undertaken by Respondents charged them with the duty to make full inquiry and to know about the primary liability of Wenstrand and others. Wenstrand filed the injunction suit[8] and appealed it. A bond was known to be necessary. It was part of the record. As party plaintiff Wenstrand was primarily liable on that bond. None of the Granada corporations were parties to the suit. Despite this, Respondents admit that when suggestions of damages were filed against Wenstrand and his surety[9] by Albert Pick & Company, they made it an express condition of the settlement with the Pick Company that Wenstrand's surety would be saved harmless by Pick's

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6. PR. 496, 497.

7. The 1928 refinancing consisted of a new first mortgage bond issue of $525,000 and a new second mortgage bond issue of $360,000 —statement at page 3 of respondents' brief.

8. *Wenstrand* v. *Pick & Co.*, See Appendix "A," Petitioner's original brief.

9. Indemnity Insurance Company of North America, see pages 9-10 of respondents' brief.

dismissing its suggestion of damages.[10] Respondent attorneys filed answers for Wenstrand, and the surety company in the suggestion of damage proceedings. They had access then to all files in 1930. The underlying and essential liability thus avoided was Wenstrand's, Riddle's and Cody's. Granada funds in the amount of $22,500[11] were paid to Pick & Company to pay off this liability of these men. The subsequent indemnity agreement in relation to the Receiver's Certificate merely left these men in the same position with Indemnity Insurance Company of North America as they were on the original injunction bond. The Receiver's Certificate was mere legal embroidery of a status of principal and surety which had been long before assumed. Respondents' counsel knew of the original indemnity arrangement which was never changed. Your Honors have stated the inescapable duty of a fiduciary to exercise constant alertness, in your opinion in *United States, ex rel. Willoughby* v. *Howard,* 302 U. S. 445.

(4) *Who hired respondent attorneys?* Respondents' statement at page 12 relating to witness Johnson's testimony that the committee did not hire Defrees, Buckingham, Jones & Hoffman, is without foundation. Johnson was not talking about 1930, 1931 or 1932. He was then at other employment. He was speaking of 1935 and 1936—two and three years after the committee had been formed. He spoke of the relation of the committee and its lawyers as it existed when the *Tuttle* v. *Harris* litigation was pending. Witness Johnson said:[12]

> "The Central Republic Bank and Trust Company employed the attorneys in the case of Harris against Tuttle,[13] which went to the Supreme Court. The committee had nothing to do with hiring those lawyers."

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10. Page 9 of Respondents' brief.
11. Page 8 of Respondents' brief.
12. PR. 436.
13. *Tuttle* v. *Harris,* No. 59143, U. S. District Court, March, 1935. *Tuttle* v. *Harris,* No. 5488 in Circuit Court of Appeals, 1935. *Tuttle* v. *Harris,* U. S. Supreme Court, 297 U. S. 225 (1936).

The case was in the name of the committee, but it had nothing to say about the employment of Defrees, Buckingham, Jones & Hoffman as its counsel. Mr. Tuttle was chairman of the committee.[14] Witness Johnson was not referring to the Thuma-Granada fixture litigation. The Thuma litigation began in June, 1930. That was before Johnson knew about Granada. (PR. 430.) He was testifying from his own knowledge about the retention of counsel in 1933 and subsequent thereto.

(5) *Mateer, Cody Trust, Albers, Barton and Gehm.* The statement in the first paragraph at page 13 of Respondents' brief covers a wide range of assertion outside of the present record. They are recited without citation of any record references.

(6) *Opposition by the Indenture Trustee to the federal reorganization proceedings.* In the last paragraph at page 17, it is stated that City National and the Committee did not oppose "the approval of the petitions in the present 77B proceedings." This is contrary to the admitted facts. The trial court found[15] that "In present reorganization case, City National and said attorneys filed in writing objection and motion to dismiss on May 17, 1937, in an effort to thwart and stay all action by this court." This finding was admitted and was never assigned as error.[16] In preparing this case for the Court of Appeals, counsel for respondents omitted from the printed record, much of the evidence pertaining to all admitted findings.

(7) *Objections were made in writing by the Court Trustee.* At page 19, paragraph 4 of their brief, Respondents state that the claims of the committee and of the counsel, Defrees, Buckingham, Jones & Hoffman, were never objected to by the Court Trustee. We submit that such asser-

14. PR. 318.

15. PR. 786, Finding 46.

16. See Appendix "D", p. 101, par. 46 of Petitioner's original brief.

tion is not the truth. At page 84 of the printed record there appears "objections by the Court Trustee to claims filed before the Special Master." And at pages 127 to 139 of the printed record, there appears the "Suggestions (objections) by Federal Court Trustee, to surcharge and falsify accounts and *to deny all claims by City National Bank and Trust Company, its Committee and their counsel;* and petition by Federal Trustee for general relief against Respondents herein named." We submit that a reading of these objections and suggestions, shows that they constitute objections of the most exact kind, to all claims by the Committee and Counsel and City National as trustee.

(8) *The Decree and Findings of Fact as submitted by the Court Trustee.* At page 21 of their brief Respondents state that the trial court entered the decree and findings of fact in "substantially the same form as had been presented by the Court Trustee." We submit that this statement is untrue. The court held the submitted findings and decree under advisement for several months to consider and revise them. The court made many changes. It eliminated whole paragraphs and many sentences from the findings that were first suggested to the court for revision. The settlement of the findings by the court, was more complete and thorough than is usual procedure in settling findings for record.

(9) *Respondents' failure to assign error.* At page 21, paragraph 1, under heading "Proceeding in Circuit Court of Appeals", respondents' brief states:

> "Respondents appealed from the decree and from all materially adverse findings."

We submit that this in untrue. At Appendix "D", pages 97-102 of his original brief, this petitioner has recited paragraph by paragraph these findings of the trial court which were fully admitted by respondents' failure to assign error. That many of these findings are materially adverse to respondents, is, we submit, shown by their own language. The

accuracy and correctness of the contents of Appendix "D" to our opening brief has not been questioned. That appendix is based upon the respondents' assignment of error[17]

(10) *Respondents' failure to argue findings which they assigned as error.* At the last paragraph of page 21 of their brief, respondents state they argued all of such findings and that Appendix "D"[18] of petitioner's brief does not deal with findings to which error *was* assigned. We submit that both statements are untrue. Both by parenthesized statement in its body, and by footnote, Appendix "D" gives those findings which were assigned as error, but which were not argued by Respondents. It appears from Appendix "D" that some seven important findings or portions of findings were assigned as error, but were never argued by Respondents in the Circuit Court of Appeals.

The "Statement of the Case"[19] by the Petitioner in his opening brief, presents all of the information essential to consideration of the case. Petitioner affirms that all of the matters therein stated are true in substance and in fact. The "Statement of the Case" as presented in Respondents' brief details many inconsequential matters not in issue in any court. Such matters as the $90,000,000 loan which General Charles G. Dawes negotiated for either his Central Republic Bank & Trust Company, or his City National Bank and Trust Company from the R. F. C.[20] have no value to sustain Respondents, so far as the case at bar is concerned. The recitation of such matters is merely for the purpose of making simple facts seem complex and difficult. Petitioner charges that the desire for complexity is the reason for such "Statement of the Case" as is made by Respondents at bar. Not only is much of the matter

17. PR. 817-832.
18. Pages 97-102.
19. Pages 3 to 12 of original brief.
20. Page 8 of Respondents' Brief.

thus mentioned by Respondents of no consequence; but, as above shown, that part of it which is of consequence, is misstated to the point of being untruthful.

Misconduct by Respondents in This Litigation.

The District Court gave an opinion to disallow the claims now at bar by Respondents, on July 14, 1938. The next day the Respondents appeared and objected to any allowance of fees on account to the Court Trustee. They appealed from the order then made. The Circuit Court of Appeals ruled that the Respondents had no right to appeal and no interest in the matter of allowances to the Court Trustee. (104 F. 2d 970.) Respondents sought a writ of certiorari from this court, which was denied (No. 469, 308 U. S. 607). The lack of interest was thus made law of the case and *res judicata*. Regardless of that final action by the Court of Appeals and by this court, the Respondents seek to renew their assertions about the Court Trustee and his compensation, even in this case where such matters are not pertinent to any issue in this record. (See peroration of brief for Respondents at pages 75-76.) This conduct by Respondents is contrary to all rules and principles for brief writing and presentation of this case. We submit that Respondents have committed a mild contempt of this court by so doing.

II.

The Respondents Did Not Faithfully Discharge Their Duties as Fiduciaries and They Are Not Entitled to Compensation.

(a) *The entire case was presented to the Circuit Court of Appeals by this Petitioner.*

Respondents do not state which of the contentions now being raised by Petitioner, were not raised in

the courts below. Their statement [21] does not specify which matters they assert are new. Their statement could not so specify, because the fact is that the contentions now being urged by Petitioner, are the ones which have always been urged, and arise as matter of law to support and apply the findings of fact made by the trial court.[22] These findings of fact were before the Circuit Court of Appeals. That court reversed them. All of the issues of law now presented have always been presented. The emphasis has varied to meet what Respondents had to say.

The brief which *Respondents* filed in the Circuit Court of Appeals, made a personal attack upon the trial judge, but admitted that much of the evidence was conflicting, and asserted that the findings should be reversed, even if based upon substantial evidence, because the trial judge (Respondents said) was prejudiced.[23] Thus the issue *asserted by Respondents* in the Circuit Court of Appeals, was whether or not the trial judge was prejudiced in his attitude and determination of the case. Respondents by their brief then admitted that the evidence was conflicting, and therefore that the findings would not be reversed, in the absence of a determination that the trial court was prejudiced and unfair. Consequently this Petitioner's first point in his answering brief in the Circuit Court of Appeals,

21. Pages 26-28 of Respondents' brief.

22. PR. 769-793.

23. Respondents' Brief in the Circuit Court of Appeals had for Point I the following heading: "FROM THE OUTSET THE TRIAL COURT MANIFESTED, AND CONSISTENTLY MAINTAINED AN ATTITUDE HOSTILE, ADVERSE, AND PREJUDICIAL TO THE INDENTURE TRUSTEE, THE COMMITTEE, AND THEIR COUNSEL, WHICH CULMINATED AS IT SEEMS TO US, IN FINDINGS AND A DECREE WHOLLY UNWARRANTED BY THE FACTS OF RECORD AND THE LAW APPLICABLE THERETO" and at page 28 of the argument their brief stated that "in those instances in which there was conflicting evidence, the findings, if against the weight of the evidence, should not stand *if it also appears that the court was prejudiced and prejudged the case.*" Also see at PR. 982.

was that the District Judge was fair and impartial in the trial of the cause and that Respondents' statements to the contrary were without foundation. [24] Although the Respondents were unsuccessful in their effort to impeach the integrity of the District Court, and despite the fact they had admitted that the evidence was conflicting, yet the Circuit Court of Appeals reversed the trial court. It is noteworthy that the Respondents in their present briefs do not attack the fair mindedness of the District Court. It shows that there was no substance in that contention once made but now abandoned by the Respondents.

Under these circumstances, and since many of the findings of the trial court had not been assigned as error and thus stood admitted,[25] this Petitioner stood upon the trial court's findings, and saw no need to make extensive citations of record references of evidence, in his brief in the Circuit Court of Appeals. Despite this however, he did make such record references as he deemed necessary for a proper presentation of this case. Portions of the testimony of Messrs. Sturm, Hall and Clarke with suitable record references were printed at pages 77-78 of his brief. Some of the testimony of Mr. O'Brien was printed at pages 42-43 of the brief. After the opinion of the Circuit Court of Appeals had stated that insufficient record references had been made, the Court Trustee made appropriate motion[26] and asked leave to file "a printed summary of substantial evidence from the original transcript of record arranged

24. At page 42 of this Petitioner's brief in the Circuit Court of Appeals, his Point I was stated as follows: THE CONDUCT OF THE TRIAL BY THE DISTRICT JUDGE WAS PATIENT AND FAIR TO ALL APPELLANTS. THE REMARKS BY APPELLANTS IN THEIR BRIEF ABOUT THE DISTRICT JUDGE, ARE NOT FAIR NOR REASONABLE. SAID REMARKS ARE AN AFTERTHOUGHT LACKING ANY HONEST PURPOSE OR FOUNDATION IN THE RECORD.

25. See Appendix "D", pages 97-102 of Petitioner's brief in this court for Findings of Fact to which error was not assigned.

26. Motion of April 18, 1940, PR. 991-995.

under and in support of the findings of fact made by the District Court."

In his suggestions in support of the motion, the Court Trustee said:[27]

> "However, the Court Trustee does not stand on ceremony. Without lessening his emphasis on legal principles that are applicable, and not withdrawing from his position, the Court Trustee is willing to go through this original transcript of record and prepare a detailed arrangement of the factual material in relation to each one of the findings of fact made by the District Court. As an officer of the court he wishes to assist by any means the court desires. He asks permission to prepare from the transcript a printed summary of substantial evidence. * * *"

This motion was denied.[28] What more could the Court Trustee do? The breach of fiduciary obligations and duties had been fully presented to the court in the briefs, the petition for rehearing[29] and the offer to annotate by additional evidence had been rejected. But whether or not the Court Trustee did emphasize the evidence of the case in the best possible way in the Circuit Court of Appeals, yet those findings of fact of the District Court which had not been assigned as error, were before the Circuit Court of Appeals. They standing alone, spoke for themselves conclusively, upon the question of the breaches of trust by respondent fee claimants.[30]

(b) *The Granada Bondholders had the right to expect that a Committee which presumed to represent them, would consist of independent persons exercising independent discretion in their behalf, and would not consist merely of pawns of other unfaithful fiduciaries and refuse to prosecute on behalf of the bondholders, these other unfaithful fiduciaries who dominated them.*

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27. PR. 992.

28. PR. 999.

29. PR. 973-990.

30. Also, Section 250 of the Chandler act provides that fee appeals shall be heard upon "the original papers."

Chart Number One at page 64 of Petitioner's opening brief, shows the domination over the committee by (1) City National Bank (2) by Cody Trust Company and officers (3) by Lewis Riddle (4) by the Arlington Hotel and (5) by the Chicago Trust Company. This chart also shows the overt acts committed by the committee in furtherance of the designs of these dominating groups. This chart fully answers the questions proposed by respondents at page 30 of their brief.

Although Respondents' title at page 29 of their brief indicates that they will defend the presence upon the committee of employees of Cody Trust Company, yet the discussion that follows does not mention the Cody Trust Company nor their employee-committee members.

So far as the committee is concerned, the gist of the apology for acts of Respondents in breach of trust, is that if a full disclosure had been made to the bondholders, that then the bondholders might have assented, and *then* the things done *might* have been permissible. But *such a disclosure was never made by Respondents to the bondholders.* The relationship of the committee members to the Cody Trust Company, to the City National, and to other adverse interests, was not disclosed to the bondholders. Respondents do not contend otherwise in their brief. The silence of the brief for Respondents on this matter speaks eloquently.

Cases Cited by Respondents.

The trial court in the case of *Cromwell* v. *Curtis,* 99 F. (2d) 810 (which is cited without discussion at page 23 of Respondents' brief), did the exact opposite of the trial court in the case at bar. The Court of Appeals indicated (p. 812) that the trial court allowed fees because it knew about all of the transactions, and thought that the attorneys were "above-board" about it. Respondents have

stated no reasons why their non-disclosure should entitle them to the same consideration.

The case of *In re Milwaukee Lodge No.* 46, *B. P. O. E.*, 83 F. (2d) 662 (C. C. A. 7) is the *first* case cited in the chart at Appendix "A" of petitioner's reply (filed herein on September 28, 1940) to respondents' answer to the petition for certiorari, wherein fees for professional reorganizers have been increased by the Seventh Circuit Court of Appeals. Petitioner could distinguish it (a 77B instead of a Chandler Act case), from the case at bar. But petitioner prefers to state that the decision is wrong and would promote a dangerous policy, contributing to the general breakdown of the trust relationship. Petitioner challenges that opinion as a departure from the law which governs reorganization proceedings.

In the case of *Kuhn, Loeb & Co.* v. *Paramount Publix Corporation*, 83 F. (2d) 406, cited by Respondents at page 23 of their brief, the opinion by Judge Manton recites that the trial judge made findings of fact that the work of the fee claimants had been noteworthy and substantial, and that they were "entitled to substantial recognition." The Court of Appeals ruled that if this were so, that then under Section 77B (c) (9), 11 U. S. C. A., Section 207 (c) (9), compensation could be allowed. There was no suggestion of any breach of trust nor of any adverse relationship. If similar findings had been made by the trial court in the case at bar, suggested by appropriate evidence, then perhaps Respondents would be entitled to fees and expense allowances. The situation of the Respondents however, is more akin to that of the banker's bondholder's committee in the 1925-1928 receivership and reorganization of the Chicago, Milwaukee and St. Paul Railway Company. A committee of the United States Senate has been investigating this transaction and has found that

> "* * * the committees abdicated to the bankers any power they might thereafter acquire, although

nominally they maintained their positions, and appeared as the owners of the property during reorganization."[31]

The Senate Committee also found (p. 12) that:

> "This window dressing function of the committees, for which, incidentally, they were handsomely paid by the reorganization managers, out of the security holders' money was an open secret to the Wall Street Financial Community."

To which it may be added that La Salle Street, Chicago, is equally well informed.

At pages 23-24 in their "Points and Authorities" Respondents list a group of cases. The argument contains no discussion of any of the cases there cited. A reading of their first case, *French* v. *Hall;* 84 N. E. 438 (Mass. 1908) shows that a disclosure of the transaction was made to the *cestui.* At page 440 the court says:

> "The last three of these accounts were assented to by the *cestui que trust,* but none of them was filed in the probate Court."

In the case at bar there was no disclosure. Respondents do not contend that there was. They avoid a discussion of their failure to perform that primary duty.

The case of *Springfield Safe Deposit & Trust Company* v. *First Unitarian Society,* 200 N. E. 541 (Mass.), cited by Respondents at page 23 of their brief, does not involve the proposition now under discussion. It does not seem from a reading of the case that the question of a dual trustee selling one trust's property to another trust, ever arose or was discussed by the court. It is difficult to determine why Respondents cited this case. It is not relevant to the issue under discussion.

Lima First American Co. v. *Graham,* 6 N. E. (2d) 33, cited at page 24 of Respondents' brief, is a case decided

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31. Page 11, Report 25, Part 18, Additional Report of the Committee on Interstate Commerce, "Chicago, Milwaukee and St. Paul Railway Company 1925-1928 Receivership and Reorganization." November 15, 1940, United States Government Printing Office.

by an Ohio Appellate Court. It is a unique decision. Although the opinion is 13 pages long in the official reports (54 Ohio App. 85), not a single authority, text or case, is cited by the court in support of the conclusions reached. It is at best, a questionable decision by an intermediate Appellate Court.

In *Roberts* v. *Michigan Trust Co.*, 262 N. W. 744 (1935), cited by Respondents at page 24 of their brief, the trustee was held liable for selling to one trust, a bond from another estate of which it was also trustee. The reason for this holding was the failure of the trustee to *disclose* to its *cestui* the nature of its dual trusteeship. The court said (p. 754):

> "The purchase of this bond was improper; the adjudication[32] on that item was not conclusive; the purchase of the bond at a profit to another estate of which the trust company was trustee should have appeared on the account or been called to the attention of interested parties."

The finding at bar by the trial court[34] relating to Respondents' failure to disclose to the Granada Bondholders and Creditors the adversity of their relationship is printed at page 34 of petitioner's original brief. Respondents' brief does not contend that the facts, as there found, relating to the absence of such disclosure are untrue. Respondents do not suggest that such a disclosure was ever made, nor that any *consent* to continue such adverse representation was ever obtained.

Likewise Respondents do not attempt to defend their breach of trust in the cancelling by them of a Granada account receivable of $4,080 due and owing from the Arlington Hotel. (See pages 35, 36, 39, 40, 44 and Chart Two, Item 1, overt acts committed at pages 65-66 of Petitioner's original brief.)

In Re Kramer's Estate, 15 N. Y. S. (2d) 700, at p. 702, it

32. The approval of the final account in the Probate Court.

34. Finding 50 at PR. 788.

appears that the will of the decedent provided that investments should be made "without either of my said Executors or Trustees being liable for such acts." The case can be fully explained upon this single point. That court said (p. 703):

> "It is of importance here that the clause contains not only dispensation from liability, but also the widest grant of power and discretion to invest in securities other than those within the class of legal investments."

The law on the subject is codified at Section 6 of the *Uniform Trusts Act*, which provides that:

> "No trustee shall as trustee of one trust sell property to itself as trustee of another trust." [33]

(c) *As trustee of Granada it was the duty of City National to obtain from Arlington the highest possible price for the rendition of heat, refrigeration and water services.*

This rule is a familiar one to all fiduciaries. If such showing had been made, it is not enough to say that the fiduciary got a "fair price" for the sale of trust property. It is necessary to prove also that (1) there was no breach of trust by reason of the trustee's representing the purchaser or other parties who had an adverse interest, and (2) that the price obtained was not only a fair price, but was also the *highest possible price* which could have been obtained. No such showing was attempted to be made by the respondents at bar.

The case of *Jackson, Receiver,* v. *Smith,* 254 U. S. 586 (1920), presents the rule. At page 588 Justice Brandeis, speaking for the court, said:

> "Ambrose had, as receiver, the affirmative duty to endeavor to realize the largest possible amount from the Schwab note * * *. To this end it was his duty

33. This aspect of the situation is recognized by Federal Reserve Board Regulation F (1937) S. 11 (c), which provides:

> "A national bank acting as fiduciary shall not make any advance to any trust from the funds belonging to any other trust, except when making of such advances to a designated trust is specifically authorized by the trust instrument covering the trust from which such advances are made."

> to endeavor to have the land, when sold under the trust deed, bring the largest possible price."

In the case at bar City National, as trustee of Granada, assumed the duty of receiving for services rendered to the Arlington the highest possible price. But as trustee of Arlington it assumed the duty of trying to get these at the lowest possible price. An existing contract provided for payments of $960 per month. City National reduced those payments to $600 per month. Respondents attempt to justify this by *now saying* that the new price was fair. In *Jackson* v. *Smith*, 254 U. S. 586, 587 (1920), it

> "* * * affirmatively appears that the sale was fairly conducted; and that the property was finally knocked down to the highest bidder."

despite which this court held (p. 589) that even if the estate had not been injured, yet the fiduciary and others had acted improperly insofar as they had an adverse interest in the transaction. At pages 32-33 of their brief Respondents cite the Restatement of the Law of Trusts, Section 170-Q, for their contention that a trustee of one trust can sell to himself as trustee of another trust. No quotation from the section so cited is made. The following quotation shows that the rule is not as stated by Respondents. Section 170-Q of the Restatement of Trusts concludes:

> "If the circumstances are such that the interests of the beneficiaries of the different trusts are so conflicting that the trustee cannot deal fairly with respect to both trusts, he cannot act without applying to court for instructions."

No Disclosure Was Ever Made by Respondents.

It is not contended by Respondents that they ever applied to any court for instructions in this matter of reducing the contract payments to the Granada from the Arlington. Nor is it contended by Respondents that they ever made any *disclosure* to any of the Granada Bondholders or Creditors of the fact that they also acted as trustee of the Arlington and Lincoln Park Manor Hotel properties, which

were buying refrigeration and heating services from the Granada property of which the City National was also trustee. The brief here filed by Respondents carefully avoids any statement upon the duty of *disclosure and consent.* The Restatement of the Law of Trusts, at the section cited by Respondents does not purport to excuse this duty. Section 170 at page 431 states:

"DUTY OF LOYALTY.

"(1) *The trustee is under a duty to the beneficiary to administer the trust solely in the interest of the beneficiary.*

"(2) *The trustee in dealing with the beneficiary on the trustee's own account is under a duty to the beneficiary to deal fairly with him and to communicate to him all material facts in connection with the transaction which the trustee knows or should know.*"

This duty of disclosure was never performed. The Granada Bondholders and Creditors were not informed by anyone, that City National was receiving commissions as trustee of Arlington,—that a material adverse relationship existed,—that because of this relationship they could not expect undivided and complete loyalty from the City National Bank and Trust Company of Chicago, its committee or their attorneys. This legal duty of full disclosure is discussed at page 24 of petitioner's original brief. Respondents nowhere contend (1) that the law is different or (2) that such requirements of disclosure were satisfied by them.

At page 32 Respondents disparage the authorities cited by Petitioner. For the sake of the record it should be noted that the cases cited at page 25 of petitioner's brief did not deal solely with the principal-agency relationship, but that they deal also and precisely with trustee-cestui relationships. One of these cases was *Nonnast* v. *Northern Trust Company,* 374 Ill. 248, 29 N. E. (2d) 251 (1940), where the Supreme Court of Illinois rules that an executor serves in exactly the same fiduciary capacity as a trustee, and that when it acts in breach of its trust it is *not entitled*

to fees for itself or attorneys. Respondents cite no Illinois cases that are contrary to this holding. The case of *Edwards* v. *Lane*, 331 Ill. 442 (1928), is in full agreement with this petitioner's contentions.

At page 33 of their brief Respondents say:

> "* * * But it is interesting to note that in Volume 3, at page 1724, Mr. Bogert states 'A sale by T, as Trustee of the A estate, to T, as Trustee of the B estate, has been sanctioned where made in good faith.'"

This petitioner believes that it is even more interesting to note that the above quotation was immediately prefaced by Mr. Bogert's statement that "In *occasional* instances such sales, however, have been approved by the court." Needless to say, the addition of this full statement transforms Respondents' quotation into a remotely minority random case. More than that: Respondents ask Your Honors to "undermine the rule of undivided loyalty by the 'disintegrating erosion' of particular exceptions."[31] The exception they suggest is, that after all, a fiduciary can serve two masters. That is not an exception. It is a broadside attack upon the fundamental law governing trustees.

(d) *Respondents' witnesses were correctly quoted and the proper meaning attributed to their testimony by Petitioner's original brief, and as such Respondents are not entitled to be compensated since they acted in breach of their trust duties to the detriment of the debtor estate.*

Pages 38 to 55 of Respondents' brief, attempt to show that this Petitioner misquoted the testimony of witnesses. This is a serious charge. Petitioner proposes to deal with that charge fully.

By way of introduction it may be said that Respondents' technique in attempting to prove their charge is (1) to quote from a different part of the record than that cited and quoted from by Petitioner; prefacing the new state-

31. Justice Cardoza in *Meinhard* v. *Salmon*, 249 N. Y. 458, 464; 164 N. E. 545.

ment with "what the witness really said was"—; (2) misquoting the record; (3) saying that the petitioner said or "implied" things which he did not say and did not imply and then attack the phantom implication with pretended anger; (4) saying exactly what the petitioner said in a slightly different way which in no manner changes the meaning of petitioner's statement regarding such testimony; (5) quoting from the "unprinted transcript" which Respondents know is not available so that Petitioner could check such quotations. These in sum and substance are the techniques used.

Because of the seriousness of Respondents' charges, this Petitioner at Appendix "A" deals with each objection made by Respondents from page 38 to page 55 of their brief.

In Answer to Respondents' Query at Page 56.

Whether or not all of the Respondents were "interested" in keeping the property in court cannot be stated. It can be stated, however, that they did keep it in court for a period of ten years. (See Appendix "A", page 93 of Petitioner's original brief.) Perhaps it was not, as Respondents urge, the City National or the Committee that did this. Respondents' discussion is limited to these two fiduciaries. This Petitioner suggests that it was probably the lawyers that kept the property in court for such a length of time. In computing their fees these lawyers used as their basis the number of hours spent and then multiplied that total by fifteen dollars.[34] If they had not spent 650.9[34] hours in the Pick furniture litigation, or 717.8[34] in defeating the jurisdiction of the Federal Court in the old bankruptcy proceedings, a total of some 1368 hours, they would not have been able to have claimed and partially receive the $20,520 that these hours multiplied by $15 total. Petitioner submits that this court has every reason to believe, and may well affirm the conclusion by the District Court, that the Re-

34. PR. 503.

spondent attorneys kept this property in court for the purpose of earning legal fees.

(e) *The breaches of trust disclosed in the failure of the committee to prosecute the Chicago Trust Company for its fraudulent prospectus and the part played in this trust violation by counsel and City National is sufficient reason why all parties Respondent should be denied fees.*

Respondents admit that if they had prosecuted the Chicago Trust Company for its fraudulent prospectus of 1924 and 1928, that Central Republic Trust Company would have had to pay for the fraud. At pages 58-59 of their brief Respondents state:

> "In 1931 Chicago Trust Company and Central Trust Company of Illinois consolidated under the state banking laws to form Central Republic Trust Company, *which by operation of law became liable for all and any liabilities of Chicago Trust Company.*"

We have already seen that Central Republic Trust Company and City National Bank and Trust Company were really one and the same thing.[35] We have also seen that the Granada Committee which was formed by City National had no independent status and was always dominated by City National Bank & Trust Company or its Central Republic adjunct who hired the lawyers for the Committee.[36] The City National as depositary for the Committee took the bonds from the bondholders and issued receipts for them. The Committee assumed to act for the bondholders in all matters pertaining to their legal rights under the Granada issues. The Committee did not attempt to hold Chicago Trust, or its successor obligor Central Republic, liable for the fraudulent statements of the 1924 and 1928 prospectus. Why not? The answer is plain. The Committee's attorneys were the attorneys for

35. PR. 195, page 36 of Petitioner's original brief; PR. 230-231, page 37 of petitioner's original brief; PR. 415 and discussion at pages 87-88 of Petitioner's original brief.

36. Testimony of Witness Johnson. PR. 436.

Central Republic. Central Republic and City National set up the Committee. Because of their adverse business connection, the Committee was stymied against starting legal proceedings even if the members had been so inclined. Respondents at pages 57 to 62 of their brief do not contend but that the Committee (which had legal title to the deposited bonds) had full power and authority to prosecute the Chicago Trust Company or its successors for this fraud. Respondents only state that the City National as indenture trustee had no authority. This breach of trust by the Committee was set forth at Chart One, Item 5, Page 64 of Petitioner's original belief.

At the top of page 59 of their brief, Respondents state that the Central Republic had, in 1932, pledged "all of its assets" to the Reconstruction Finance Corporation. There is no such evidence in the record and this statement is made without reference to the record. The Committee had been "functioning" for eighteen months before a receiver was appointed for Central Republic. The Committee could have obtained a pro rata share of Central Republic's assets, had it obtained a judgment, but suit was never commenced.

The claim could still have been made when Central Republic made its final account and City National upon Central's resignation was appointed trustee of Granada, but again, the claim was not asserted, but was released.[36-A]

At page 60 Respondents say that the cause of action was barred by the five year statute of limitations, which would have started running "September of 1928, the date of the sale of the bonds." In this they are again in error. It is a familiar rule of trust law that the Statute of Limitations does not begin to run until a disclosure of the breach has been made by the fiduciary. *State Bank & Trust Co. v. Commercial Trust & Savings Bank,* 300 Ill. App. 435, 21 N. E. (2d) 157. If the cause of action was

36A. PR. 114, 536 and unprinted transcript 1319 and 1322.

in fact barred by the five year statute of limitations it could only be because Respondents as agents of the bondholders had a knowledge of the fraud involved in the issuance of the prospectuses.

At page 62 Respondents suggest that the transaction at bar was approved by the Circuit Court of Appeals in the case of *Indemnity Insurance Company vs. Granada Apartments, Inc.,* 104 Fed. (2d) 528. This is not true. As respondents well know, although they were not parties to that suit, the court merely held that the indemnity company (I. I. C. N. A.) was not guilty of meddling in obtaining the receiver's certificate. Nothing in that case discusses the possible liability of the Respondents who are now before Your Honors.

At page 62 Respondents attempt to restate their assignments of error. The statement contained at pages 97 to 102 of petitioner's brief is accurate. Respondents have not questioned it. The statement at page 62 of Respondents' brief is inaccurate. Parts of findings 15, 20, 28, 37, 45 and 47 were assigned as error, but findings 14, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 31, 36, 44, 51 and 57 contain, as is shown at pages 97-102 of Petitioner's original brief, matter of a most material nature which was never assigned as error and which is sufficient reason why the trial court denied fees to Respondents.

(f) *The question of the amount of fees that should be paid a fiduciary is always a question of great importance to a court of general equity jurisdiction such as the United States Supreme Court.*

Petitioner does not retreat from his position that the Respondents are not entitled to *any* compensation. He will not discuss the relative fees that should have been allowed had the Respondents conducted themselves in accord with principles of good conscience and equity. Such a

discussion could proceed only from a false premise and be entirely hypothetical.

However, the Supreme Court of the United States, as a court of equity, is always interested in the question of the amount of fees allowed to a fiduciary. For this reason it would perhaps be helpful for the Court Trustee to present a statement on the matter.

The Respondents have asked for allowances totalling some $55,086.[37] Respondents' witnesses have testified that the debtor's property was worth $200,000 or $250,000.[38] Accordingly the claim of Respondents, if allowed, would amount to one-fourth or one-fifth of that valuation of the debtor property. Petitioner submits that such a charge could be justified only by the most unusual of circumstances and the utmost loyalty of the fiduciaries in the performance of beneficial services to the debtor. It is not shown that any of the services ever performed by the Respondents have been beneficial or have in any way increased the value of the debtor estate. Respondents do not so contend. It has been shown however, that the Respondents, in committing various breaches of trust, have performed a dis-service to the estate and its creditors and have lessened its value.

III.

The Circuit Court of Appeals Reversed the Uncontested Findings of the Trial Court.

Respondents contend at pages 63-64 of their brief that "the admitted facts do not show any breaches of trust or failure of fiduciary duty which warrants disallowance of Respondents' fees" and that in writing its opinion and deciding the case as it did "the Circuit Court of Appeals did not reverse any of the findings of the trial court which

37. Pages 763-764 of Printed Record.
38. PR. 220.

were not contested." At pages 97 to 102 of petitioner's original brief, he has listed and quoted, paragraph by paragraph, those parts of the findings of the trial court which were not assigned as error by the Respondents. That summary perfectly corresponds with Respondents' assignment of errors.[40] Also at pages 32-33, 42-43, 51-53 of Petitioner's original brief, some of the findings of the trial court which were not assigned as error are fully set forth.

It would serve no useful purpose to restate again these admitted findings. It is sufficient to state that they do relate to breaches of trust which were of such a serious nature as to justify a disallowance of the claims of the Respondents. The story is completely and carefully told in Appendix "D" of Petitioner's original brief. Respondents' Appendix "A" does not tell the story carefully or completely. The findings are not quoted, they are not numbered by paragraphs, they have no record references. It is impossible to tell which finding is which, or whether or not certain uncontested findings have been omitted. At first glance it appears, however, that the uncontested portion of finding 57 (PR. 790-791) is omitted from Respondents' summary at their Appendix "A". It is correctly quoted at page 102 of Petitioner's original brief.

The statements at pages 64-66 of Respondents' brief do not seem to deal with the matter under discussion, nor does the quotation from Petitioner's Circuit Court of Appeals brief (bottom of page 65-66) support the conclusion which Respondents would draw. The brief, as quoted does not charge "conspiracy".

Petitioner submits that the opinion of the Circuit Court of Appeals is directly contrary in all respects to those parts of the trial court's findings, which were not assigned as error. This proposition is fully discussed at pages 71-74 of Petitioner's original brief and at pages 46-49 of the Petition for Certiorari.

40. PR. 817-832.

IV.

The Circuit Court of Appeals Failed to Analyze Correctly the Evidence. Its Opinion Violates Rule 52 of the Rules of Civil Procedure.

Respondents' brief on its face shows, that the evidence on several points was conflicting. When Respondents' statement of the evidence is compared with Petitioner's quotation of the evidence, that conflict is even more apparent. At the very least it would seem (taking the case on the evidence alone and in disregard of the uncontested findings of the trial court) that the rule stated by Respondents at page 67 of their brief in relation to the cases of *In re Peacock Food Markets,* 108 Fed. (2d) 453 and *Savenger Service Corp.,* v. *Courtney,* 85 Fed. (2d) 825, would fully apply to the case at bar with identical results. Both of these cases were cited in this Petitioner's brief in the Circuit Court of Appeals. The *Peacock Food Markets Case* was analyzed at considerable length and fully compared with the case at bar at pages 75 to 81 of Petitioner's brief as filed in the Circuit Court of Appeals.

Petitioner does not deny that the Circuit Court of Appeals paid lip service to Rule 52 (page 68 Respondents' brief), but states that despite this the Court of Appeals did not substantially conform to or obey Rule 52 of the Rules of Civil Procedure. The failure is discussed rather fully, and correctly, at pages 15 to 35 of the Petition for Certiorari as filed in this court.

V.

The Court of Appeals Erred in Denying the Court Trustee's Motions to Dismiss.

This proposition is discussed at pages 50-51 of the petition for certiorari and at pages 76 to 80 of Petitioner's original brief.

Respondents' answering brief does not make it necessary to discuss at great length the issues herein involved. However, two matters should be clarified as follows:

(1) *Were two appeals necessary?* At page 70 of their brief Respondents state that two appeals were necessary because there were "other matters" at issue besides fees. This is not true so far as appeals 6986 and 7060 were concerned. Those cases dealt only with the compensation of the Respondents. They are identical to 281-282 which are now before Your Honors. There was no need for two appeals since each appeal was the same as the other.[41]

(2) *The extension of time on July 7, 1939.* This extension of time related only to appeal 7060; which was *the appeal by right.* That appeal, under the authority of *Dickinson Industrial Site* v. *Cowan,* 309 U. S. 382, was invalid. The only appeal pursuant to the *Dickinson Case* would be the one by leave, No. 6986. No timely or proper extension of time within which to file the record was ever obtained from the District Court in appeal 6986. This matter was called to Your Honors attention at the last sentence of paragraph one on page 80 of Petitioner's original brief. Respondents admit that this extension related only to 7060 (p. 71, their brief).

A complete discussion is to be found at PR. 1014-1023, which is the Petitioner's Motion to Dismiss and the suggestions in support of that motion.

VI.

The Circuit Court of Appeals Ruled That the United States District Court Was Without Power to Disallow Fees Mentioned By the Decree of the State Court.

For the reasons stated in his original brief at pages 81 to 87, this Petitioner is of the opinion that his criticism

41. The opinion of the Circuit Court of Appeals at PR. 956 States: "Appeals 6986 and 7060 are the same."

of the Circuit Court of Appeals in this regard is proper and that the correct conclusions were there drawn.

Respondents have never before admitted in their briefs in any court that their fees were not a matter of *res adjudicata* because of the state court decree. That admission now is made as an afterthought and with serious reservations, which are suggested at the last paragraph of their Point V, page 75.

In Conclusion.

The control by law, of those who manage or use the property of others, is a primary problem throughout the world, and in all history. In the ancient world those who had control or uses of property for others usually were slaves of others. These slaves had neither property nor civil rights. In the medieval world the control was exercised through the status of lord and retainer, who were bound together by sworn oath of fealty. After feudalism fell in England, the courts of equity gradually built up the fiduciary concept or relationship of trustee and beneficiary. The core of this relationship is fidelity to trust.

It seems that regardless of what form government takes, there must necessarily be a primary relation, protected by law, whereby property rights of minors, sick people, old people, people unfamiliar with the market place, may have their property cared for with undivided loyalty, under the ultimate supervision of courts and the government. In a democracy, such relationship usually arises in *pais* by agreement of the parties.

It is difficult to see how any government that recognizes private property can endure, unless some such relationship has the approval and constant support of the government. Any government which fails to maintain the ethical standards of that relationship, cannot keep the confidence of its citizenry. When the relationship of master and slave, or

lord and retainer, or trustee and beneficiary, or lawyer and client, is threatened with change, or is abused by either party thereto, a question of the utmost importance is presented regarding the continuance of the economic and social order.

That important question is now before Your Honors in the case at bar. Some of the laws enacted by the Congress during the last eight years have served to enforce the rules of good conscience relating to the fiduciary relationship. Laws such as the Securities and Exchange Act state the definite legislative policy of today. The Chandler Act is likewise built upon the concept of faithfulness of fiduciaries. It was to this end that courts of bankruptcy and of reorganization were given equitable jurisdiction. The trial court which heard the evidence in the case at bar was such a court. In the performance of its duty to enforce the rules relating to fiduciary conduct, it saw fit to deny to the Respondents now at bar certain claims for allowances. The pleadings and briefs by respondents, when read together, contain substantial admissions, which are sufficient to sustain the few findings by the District Court about which respondents now raise any question. As is shown at Charts One, Two and Three at pages 64 to 70 of Petitioner's original brief, there was ample evidence to support that decision. Much of the evidence thus presented to the trial court was preserved in certain findings of fact of the court which were not assigned as error. (See pages 97-102 of Petitioner's original brief.)

Petitioner submits that the reversal of the decree as entered in the District Court, by the opinion and orders of the Seventh Circuit Court of Appeals, presents a question of the continuance of a government dedicated to the protection of the ethical standards of the fiduciary relationship.

Prayer for Relief.

Wherefore, petitioner prays that those portions of the decree and findings of the District Court which were appealed from by the respondents, be affirmed, and that the decrees and opinion of the Circuit Court of Appeals be reversed, to the end that all fees and expenses be *denied* to City National Bank & Trust Company of Chicago, as former trustee, to the Granada Bondholders Committee, and to Defrees, Buckingham, Jones & Hoffman, as counsel for City National and as counsel for the Committee, that all costs in all courts be assessed against the respondents, that the cause be remanded to the District Court to determine, assess and enter judgment against the respondents for said costs, and for such relief as to this court may seem meet.

WEIGHTSTILL WOODS,
Attorney for Petitioner.

APPENDIX "A".

Respondents' witnesses were correctly quoted and the proper meaning attributed to their testimony by Petitioner's Original Brief. The objections stated by Respondents at pages 38 to 55 of their brief are "posed objections" carelessly made, and lacking in substance.[1]

(Page 38.)

(1) Sturm's statement as quoted by Petitioner is correct. Respondents' statement so shows. (Technique 4.)

(2) Sturm's statement as contained in Petitioner's brief is correct. Respondents' statement is only an attempt to assign reasons for the "cooperation". (Technique 4.)

(3) Sturm's statements in regard to creation of the committee, appointment of depositary and fees to members are again correctly stated. Respondents' statement is mere reiteration. (Technique 4.)

(Page 39.)

(4) Respondents do not question Petitioner's quotation from Sturm regarding the appointment of City National. They argue with the truth of Sturm's testimony by making their own unsupported assertion. (New technique.)

(5) Sturm's statement in regard to the committee's failure to object to lawyers' fees as quoted by petitioner, was at pages 229 and 214 of the printed record. Respondents state "Sturm said" and say they quote from a different part of the record at page 220. (Technique 1.)

(6) Sturm did not know what the property was worth, nor the tax situation from year to year. As stated at page

1. A discussion of the techniques utilized by respondents in their objections is to be found at pages 19-20, Point II (d) of this brief.

37 of petitioner's original brief, he didn't know within $50,000 of what it was worth. Respondents' quotation so admits. (Technique 4.)

(7) Respondents' statement does not materially change Sturm's statement that "I know it was represented in the circular that they bought the personal property when they bought the bonds, but they did not get it."[2] Despite the fact that Respondents prepared and abstracted the printed record, they indicate that it is inaccurate. (Techniques 4 and 5.)

(Page 40.)

(8) Respondents' quotation of Sturm from the unprinted transcript:

> "Q. Then it was paid for twice?
>
> "A. You can draw your own conclusions. I don't know."

proves the correctness of petitioner's statement that he didn't know if the furniture had been paid for twice. (Techniques 4 and 5.)

Sturm did not say that he thought the receiver's certificate was uncollectible so far as the Cody Trust *Officers* were concerned. His statement merely related to the Cody Trust Company itself—as an insolvent corporation. (Technique 2.)

(9) Petitioner can make no improvement upon the admission appearing at the top of page 41.

(Page 41.)

The petition as filed[3] by Charles S. Tuttle and the Committee was entitled "Petition for *Fees* and Expenses of the Committee for the Protection of the Holders of First Mortgage Bonds." (Technique 3.)

Sturm did not testify that the Granada stock went over to Mr. Albers as Receiver of Cody Trust Company. Re-

2. PR. 225.
3. PR. 156.

spondents refer to PR. 220 in support of their contention. The record at page 220 shows that they are mistaken. (Technique 2.)

(10) Mr. Sturm and the indemnity bond were discussed in Petitioner's brief with reference to page 229 of the printed record. At that page Sturm testified:

> "I understand that as a part of the settlement Mr. Wenstrand, Mr. Lewis W. Riddle and Mr. Hiram S. Cody, who were on that indemnity, Exhibit 'M', together with the Indemnity Insurance Company of North America, were released on their bonds of $40,000 in this court in case 8817, which was in default. I thought that it was proper to take the funds of this trust and pay off the obligations of those people on that bond in this court. I am not sure whether the matter was discussed at the bank before that payment was made. I believe I sat in on a discussion of it. I have a recollection of having discussed it, and I believe Mr. O'Brien[4] was present."

(Page 42.)

Respondents' discussion of another part of the record (PR. 225) is not in point. After failing to disclose this material on direct examination, Sturm reconsidered his answers on cross-examination and said that the whole matter had been discussed and that he knew of the indemnity arrangement. (Technique 1.)

(11) What O'Brien said (without qualifying it) was:[5]

> "Prior to the time that the Appellate Court rendered its decision I had numerous conferences with the parties in interest in an attempt to effect a settlement, those parties including Cody Trust Company, Central Republic Trust Company, Wenstrand, Hall, Granada Apartments, Inc., on the one side, and Klinger, Wilpartz & Hirsch and Schanfarber on behalf of Pick's assignee. At about that time Pick was seeking to recover on a suggestion of damages filed against the surety company on the appeal and injunction bonds in

4. Mr. Vincent O'Brien of Defrees, Buckingham, Jones & Hoffman (now Defrees, Buckingham, O'Brien & Fiske).

5. PR. 476.

the United States District Court proceeding above referred to. I believe that Wenstrand was really acting for Cody Trust Company in those proceedings. Hiram Cody and Lewis Riddle had given the surety company an indemnity agreement, but by 1933 Cody Trust Company was insolvent."

Respondent attorney thus testified. Respondents attempt to change the meaning of this testimony by quoting other portions of the record. (Technique 1.)

(Page 43.)

(12) Discussed in this brief at pages 3 and 36.

(13) Respondents' quotation of Arnold Johnson is partial and incomplete. He said[6] (speaking of the Reorganization Division of the City National Bank):

"* * * he would follow through from a reorganization standpoint *to make recommendations to the committee*[7] and put things in a concrete form *and to* make recommendations *as to a plan of action or* a plan of rec ganization. *I was in charge of those men.*"

Respondents' garbling of this testimony is neither helpful nor straight-forward. They have misused quotation marks in so doing. The correct quotation fully shows the extent that the Committee delegated its functions and duties to City National's "Reorganization Division".

Likewise when Respondents quote Johnson at page 431 of the printed record (and again they misuse the quotation marks) they omit, without indicating the omission, the following:

"The Reorganization Division was a division of the bank. All of the reorganization work with reference to the Granada was not conducted by that branch of the bank. Mr. Tuttle and Mr. Sturm are employed by the bank and are in its Reorganization Department."

(14) A perfect example of Technique 3. Petitioner

6. PR. 423.

7. Words depleted in Respondents' quotation are here italicized.

implied no such thing. How could one Committee book show the meetings of 400 Committees? Petitioner only said that "the Committee" held only four meetings.

(Page 44.)

(15) This contention of counsel is fully discussed at Point I of this brief at pages 4-5. As is there shown, witness Johnson was not speaking of the Thuma litigation (1930), but of the Harris-Tuttle matter (1935). (Techniques 1 and 2.)

(16) This is an example of technique 4, except that Respondents leave out Hubbart's statement that "$4,080 of accumulation for 1933 was not paid".

(Page 45.)

(17) Respondents' attempt by other witnesses to impeach the testimony of their own witness, Hubbart. Hubbart's testimony was:[8]

> "I did not make any effort to get any permanent tenant in that space."

(18) Respondents admit that it is true that Central Republic was trustee under both mortgages. (Technique 4.)

(19) Respondents do not deny Bickel's statement. They merely quote from a latter portion of the record. (Technique 1.)

(20) Respondents do not deny that witness McDonnell said he would "endeavor to make some use of the space to bring in some money,"[9] despite the restrictions stated. (Technique 1.)

(Page 46.)

(22) Respondents still do not explain the $4,080 charge-off. (Technique 1.)

(23) Respondents do not question the correctness of

8. PR. 176.
9. PR. 385.

Petitioner's quotation or following statement, but attempt to give new testimony on the subject. (Technique 1.)

(24) Petitioner's statement is again admitted with record references in aid thereof.

(Page 47.)

(25) O'Brien's statement as quoted by Petitioner is correct and the printed record prepared by him at the bottom of page 502 so shows. His present effort, without record references is an attempt at self-impeachment.

Paragraph 57 of the trial court's finding as quoted was not assigned as error. (See page 102 of Petitioner's original brief.)

(26) Respondents admit that "they were counsel for Central Republic Trust Company as Trustee under the Granada trust deed." (Technique 4.)

(Pages 47-48.)

(27) The statement at the second paragraph is without record reference or other supporting authority. The contrary facts may be assumed since Mr. O'Brien had himself testified[10] that

> "I think we were acting for the Chicago Trust Company as its general counsel."

Respondents do not refer to this admission. They desert the printed record which they themselves abstracted, printed and prepared, and quote from the unprinted transcript. (Technique 5.) The quotation, however, does not materially change the substance of the facts. (Technique 4.)

(Pages 49-50.)

At page 50, Respondents jump from page 1033 of the unprinted transcript to page 1036. This is for the purpose of omitting witness O'Brien's statement that $120,000 worth of furniture "depreciated" to $5,000.[11]

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10. PR. 497.
11. PR. 497, R. 1033.

(Page 51.)

O'Brien's testimony regarding his knowledge of the indemnity agreement is at page 476 of the printed record and is printed herein at pages 33-34.

(Pages 52-53.)

Respondents state that there is "a complete lack of any record evidence to show that attorney-respondents ever represented Cody Trust Company * * *." Respondents are mistaken. At page 978 of the printed record, it appears that the Cody Trust Company was represented by Defrees, Buckingham, Jones & Hoffman in some five cases before the Illinois Appellate Court. The citations of these five cases are: 266 Ill. App. 141; 269 Ill. App. 638; 272 Ill. App. 167; 293 Ill. App. 1; 294 Ill. App. 342. In view of this, Petitioner seriously questions the good faith of Respondents when they state that they never represented the Cody Trust Company.

(Page 54.)

Respondents admit that they have been unable to find in the record "any agreement or court order substituting City National Bank for Central Republic Trust Company" as depositary. (See page 89 of Petitioner's original brief.)

(Pages 54-55.)

Respondents do not deny that they were the attorneys for the Chicago Trust Company. They only deny that they were Cody's Attorneys. As we have seen above, Respondents also represented the Cody Trust Company.

(Page 55.)

Petitioner believes that Appendix "E" is entirely accurate. Respondents say that they deny parts of this Appendix. They do not say why or upon what basis the statements therein contained are inaccurate. They make no specifications which would permit of a rebuttal by this petitioner.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

Nos. 281–282

IN THE MATTER OF GRANADA APARTMENTS, INC., DEBTOR.

WEIGHSTILL WOODS, COURT TRUSTEE,
Petitioner,

vs.

CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AND OTHERS,
Respondents.

ANSWER OF RESPONDENTS TO PETITION FOR WRIT OF CERTIORARI.

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INDEX.

	PAGE
Statement	1
Argument	2
Conclusion	21

CITATIONS.

CASES:

Dickinson Industrial Site v. Cowan, 309 U. S. 382. 3, 7
Butzell v. Webster Apartments Building, 112 F. (2d) 362 ..... 7, 21
Tuttle v. Harris, 56 S. Ct. 416 20

RULES AND STATUTES.

Federal Rules of Civil Procedure 2, 4
Section 77B of the Bankruptcy Act, as Amended ... 10, 11

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MAY IT PLEASE THE COURT:

We submit that the petition should be denied. Commencing at Record 769 and continuing to page 791 are 58 findings of fact made by the trial court, some materially adverse to these respondents and others not. Our exceptions were taken and noted (R. 793). Prior thereto we had assigned in writing our objections to the findings submitted by the Court Trustee (R. 722). We then appealed to the United States Circuit Court of Appeals from those findings which were materially adverse

and from the portions of the decree which were adverse. The whole record was certified up along with our comprehensive statement of points relied upon and our assignment of errors (R. 799 and 817).

The United States Circuit Court of Appeals reversed the findings complained of and reversed those portions of the decree complained of.

Assuming that reasons for review exist, which we hereafter deny, the Court Trustee is now here seeking certiorari to reverse the action of the Court of Appeals with full burden of demonstrating that the findings so reversed were not clearly erroneous; for if they were, the United States Circuit Court of Appeals was entitled to disregard them and to set them aside under Federal Rules of Civil Procedure, Rule 52.

An examination of his petition, however, discloses no reference to the evidence, with some three or four exceptions. He seems to be of the opinion that the findings of the trial court must stand in any event and that it is quite unnecessary even under the circumstances of this case that he show how they are supported.

The evidence in this record is in the form of a narrative statement but the parties were given leave to refer to the original transcript of evidence should they care to do so (R. 921). That original transcript of evidence is on file with the Clerk of this Court although the petitioner has refrained from having it printed. The trial court's oral opinion was transcribed and is of record, page 761. Reference thereto will disclose the extent to which the findings which the Court Trustee was directed to and did prepare depart from any which were made by the trial court in its opinion.

If those findings are true, the Court's decree should have been affirmed and not reversed.

On our appeal to the United States Circuit Court of Appeals we took the burden of showing that they were not true. The Court Trustee has made no attempt here to satisfy his burden of showing that the findings were not clearly erroneous, and if we were to assume again the burden of showing that the findings were either wholly unsupported by the evidence or were clearly erroneous there would be no meaning to burden of proof.

Specifically, other reasons for denial of the petition are as follows:

I.

At pages 52-55 of his petition the Court Trustee lists the reasons which he relies upon for issuance of the writ. None is sufficient unless it be the one contained in paragraphs l, m, n, o and q, all of which really relate to the same point.

The Court Trustee's motion to dismiss our appeal taken as of right was predicated on the proposition that the appeal involved only the question of fee allowances, and that since the decision in *Dickinson Industrial Site* v. *Cowan*, 309 U. S. 382, such appeals may be taken only by leave; and also on the further proposition that even if questions other than fee allowances were involved so that an appeal by right was necessary, it was not perfected within the time or in the manner provided by the law and the rules then in effect.

The Court Trustee's motion to dismiss Appeal 6986 (the appeal by leave) is based on the proposition that the rules of the United States Circuit Court of Appeals then in effect did not prescribe the mode or method of taking an appeal by leave but that such appeal was governed by the Federal Rules of Civil Procedure, and that the appeal was not perfected within the time or manner provided by the latter rules.

Both appeals were taken by us from the decree entered May 2, 1939, and from the findings of fact which by reference had been incorporated into that decree. The decree disposed of issues which arose on the final report and account of City National Bank and Trust Company of Chicago, as Indenture Trustee, on the claim of City National Bank and Trust Company of Chicago in its own behalf, on the petitions for fees and expenses of administration filed by the Committee and its counsel, the objections of the Court Trustee to all of the foregoing and upon the counterclaim of the Court Trustee seeking to surcharge the Indenture Trustee with substantial sums for alleged wrongful acts and omissions in the management and operation of the mortgaged premises.

It is thus apparent that while the question of fee allowances is involved in the appeal, there are many more vital questions involved which have nothing to do with fee allowances. As the question of fee allowances and expenses could be raised only by an appeal by leave and as all of the other matters from which the appeal was sought could be raised only by appeal by right, it was necessary to take an appeal by right and also an appeal by leave.

The fact that the appeal by leave raises other questions in addition to those involving fee allowances was not at the time grounds for dismissal of that appeal, nor was the fact that the appeal by right included the question of fee allowances ground for its dismissal, since there were questions left for review which could only be reviewed by appeal taken in that manner. There is, therefore, no basis for the contention that by appealing by one method we were estopped to appeal by the other.

As to the appeal by right, we admit that it is governed by the Federal Rules of Civil Procedure, particularly Rules 73 and 75.

We filed our notice of appeal on June 1, 1939 (R. 796) or within thirty days of the date of the entry of the decree appealed from. Accordingly under Rule 73(g) we were required within forty days of June 1, 1939 to file the record in the United States Circuit Court of Appeals unless the District Court granted further time on motion made within the forty-day period.

The claim of the Court Trustee is that the record not having been filed until August 19, 1939, which was more than forty days after the filing of the notice of appeal, there was no compliance with the rule and accordingly the appeal was not perfected.

As the Court Trustee well knows, on July 7, 1939 the District Court did extend the time. The order does not appear in the printed transcript here but it is admitted by the Court Trustee. At Record 1007, in his motion to dismiss, he said, "On July 7, 1939 appellant secured an order in the District Court extending time until August 19, 1939 for docketing said case on appeal; and within said time did so docket said appeal in said Court of Appeals as Case No. 7060." See also original transcript of record from the Clerk of the District Court, pages 477 and 478, at which the order of the District Court appears.

It is thus manifest that the record on the appeal by right was filed strictly in accordance with the Federal Rules of Civil Procedure.

While it is true that the Federal Rules of Civil Procedure superseded all rules of the Circuit Court of Appeals which were conflicting, the fact remains that the Federal Rules of Civil Procedure relate only to appeals by right and are entirely silent as to appeals to be taken by leave. An examination of Rule 73 confirms this assertion.

It follows that the procedure on appeals by leave was controlled by the rules of the United States Circuit Court

of Appeals for the Seventh Circuit in effect at the time the appeal by leave was taken and allowed. The rules remained in effect until November 10, 1939, when the present rules of the United States Circuit Court of Appeals for the Seventh Circuit became effective.

What then were those rules and what did they provide? Rule 13, Section 1, provid d among other things that the transcript should be filed with the Clerk of the Court of Appeals on or before the return day specified in the citation unless the time was enlarged by a judge of the District Court or by the Court of Appeals or some judge thereof. Section 3 of Rule 13 provided that the citation must be returnable within thirty days from the date on which the appeal was allowed, which it was in this case (R. 834). On June 12, 1939 we petitioned the Court of Appeals for leave to appeal. On June 22, 1939 leave was allowed and citation issued returnable July 22, 1939. Accordingly, the record was due in the Court of Appeals on July 22, 1939, but on July 19, 1939, a short record having been filed, we made a motion in the Court of Appeals to enlarge the time for the filing of the full record, which was allowed on July 21, 1939 and the time extended to September 16, 1939 (R. 873). On August 19, 1939 we filed a full record in appeal 7060, the one taken by right. That having been done, on September 8, 1939, within the time as enlarged, we moved in each case that the two appeals be consolidated and that the record filed in the appeal by right, together with the short record filed in the appeal by leave, stand as the record (R. 876). The motion was granted (R. 919).

Even if by any possibility the Federal Rules of Civil Procedure rather than the then existing rules of the Court of Appeals controlled appeals taken by leave, the Court Trustee's contention that that appeal should be dismissed because the record was not filed within the time fixed by the Federal Rules of Civil Procedure would be

without merit; for it is a familiar rule to this Court that if the appellants failed to file their record on time, the appellee could have had the cause docketed and dismissed. If, however, the appellant files his record late but before the appellee has moved for dismissal there is no penalty. The present Rule 11 of the Court of Appeals as adjusted to conform to the Federal Rules of Civil Procedure is substantially to the same effect.

We submit that this is a complete answer to Court Trustee's reasons (l), (m), (n) and (o) and, the facts being as they are, a complete answer to reason (q).

The Court of Appeals for the Seventh Circuit has held that appeals from fee allowances are by leave. This Court has affirmed its decision in that case (*Dickinson Industrial Site, Inc.*, v. *Cowan*, 60 S. Ct. 595). The ruling of the Sixth Circuit in the matter of *Butzel* v. *Webster Apartments Building*, 112 F. (2nd) 362, is not at all in conflict for it does not hold that the Court of Appeals can review fee allowances as a matter of right but merely that those courts may, under the Bankruptcy Act, review and readjust fee awards made by the state courts.

Then too the Court Trustee complains that there were "surprise issues" and that the Court of Appeals did not adhere to the record issues. We again refer the court to our statement of points (R. 799) and we submit *that no matter of consequence was omitted therefrom* or from the issues presented by our appeals.

Nor did the Court of Appeals set aside findings in omnibus fashion. An examination of its opinion shows that it is only those material findings which related to allowances to the Court Trustee and to alleged wrongdoing of the Indenture Trustee, Committee and counsel which were set aside.

From the foregoing it appears that no reason of which

this Court will take cognizance exists for the granting of the petition.

II.

The Court Trustee uses the names of City National Bank and Trust Company of Chicago, of Central Republic Trust Company, of the Committee members and of their counsel interchangeably. In mentioning the sums alleged to have been wrongfully disbursed or retained he does not specify who made the disbursements or who retained the funds but charges generally that City National Bank and Trust Company of Chicago is liable. Central Republic Trust Company went into receivership November 20, 1934, and as far back as June of 1932 was heavily indebted to the Reconstruction Finance Corporation to which it had pledged all of its assets. City National Bank and Trust Company of Chicago, a National banking association, separately organized under the laws of the United States, took over its deposit liabilities but none other. By order of the state court the latter bank became Successor Trustee of this Trust January 3, 1935 after the resignation of Central Republic Trust Company had been accepted by the state court. Nor was the Committee controlled by either bank. There were five members and three of them had no connection whatsoever with either bank (R. 422).

Now there was nothing in the Trust Indenture which purported to create any lien on furniture or to make it any part of the real estate, nor does it appear that in the loan agreement or otherwise the borrowing corporation undertook to give a first lien on the chattels (R. 505).

And we deny the Court Trustee's implication that provision was made for the payment of the Pick claim out of the proceeds of the refunding loan. Indeed, the record affirmatively shows that no provision was made in the loan account for the payment of the Pick items (R. 499).

Assuming, therefore, that there had been any misrepresentation to bondholders in 1924, the time of the original loan, or in 1928, the time of the refunding loan, the remedy of the bondholders would have been an action not against the Trustee to compel it to obtain all of the Trust Estate which was to have been delivered to it—for it already had all of the Trust Estate—but an action against the underwriters for misrepresentation. Such an action is personal to the bondholders and would lie against the Cody Trust Company or Chicago Trust Company, according to which underwriter sold the bonds. Among the conditions precedent to recovery would be that the purchaser show that the misrepresentations related to a material matter; that he show the circular which contained it and that he relied upon it in purchasing his bond.

Having in mind that City National Bank and Trust Company of Chicago did not become Successor Trustee until January of 1935, what possible connection with or responsibility for the underwriting could it have unless it took over the liabilities of the underwriter, which it did not. As a matter of fact, there is not a word in the record showing that during or prior to the year 1935 City National Bank and Trust Company of Chicago knew anything about the circular or its contents. But even if it did, no duty or liability would have been thereby imposed upon it.

Immediately upon its appointment it secured from the Receiver or its predecessor in trust all of the trust estate, consisting of land, building and all furniture, furnishings and equipment therein on which at that time there *was* a chattel mortgage as additional security (R. 509). Later when the account filed by the Receiver on behalf of Central Republic Trust Company was approved by the state court, City National obtained all of the funds in the Trust, amounting to $9995.46 (R. 114).

So that the Successor Trustee fully performed all of its

duties and obligations and it continued to do so until the property was turned over to the Federal Court.

It is suggested by the Court Trustee on some undisclosed theory that City National Bank and Trust Company in January of 1935 or thereafter should have proceeded against the underwriter. By virtue of what power or right? Does he mean that the Successor Trustee under a trust deed in the absence of an express power therein contained acquires the right to sue the underwriter on account of misrepresentation, if any, to the purchaser of the bonds, and, if so, what would be the nature of the action and for whose use and benefit? Would it be for all the bondholders or for only those who saw the circular and relied upon it, and just who were they? How much would the judgment be and, again, for whose use and benefit? What would be the likelihood of successfully prosecuting such action, the Illinois Statute of Limitations, of which the court will take jurisdictional notice, being for five years, commencing September of 1928, the date of the sale of the bonds? And, again, what prospect of recovery against underwriters in receivership on any judgment obtained, to justify the expense of the proceeding?

We see no sense to the Court Trustee's contentions in this regard.

The Court Trustee sets up various appendices which are not in the record. Appendices A, B and C were presented by him to the Court of Appeals after the oral argument "for its convenience." He follows more of the same tactics at the conclusion of his brief where he argues that since some committees and trust companies have been derelict in their duties, that the Committee and Trustee of the Granada must have been.

Until the enactment of Section 77-B it was nothing unusual for foreclosure proceedings to pend for years with-

out conclusion. The story in this case was told by the witness Johnson (R. 421). His testimony shows that everything possible to do was done to get the matter out of court.

When the case was properly brought in 77-B by petitions approved May 17, 1937 (R. 2), the Committee lost no time in procuring confirmation of a plan. The plan was confirmed July 12, 1937 (R. 101) and notwithstanding the intervention of the summer vacation the property went over to the new company on October 22, 1937.

III.

At page 26 of his petition the Court Trustee complains of the decree of sale entered by the state court in the foreclosure proceeding for two reasons—first, that it does not find that the moneys are due the complainant from Granada Apartments, Inc., the debtor, but rather finds that they are due from Granada Hotel Corporation, its predecessor and the mortgagor; second, that the state court did not approve the account of the Indenture Trustee relating to funds collected by it while mortgagee in possession.

As to his first contention, it is sufficient to say that a decree of foreclosure and sale is one *in rem*. The primary purpose is to state the account as between the parties, to find the lien of the mortgage upon the property as security for the amounts found due and to order a sale of the property. And this is so whether the mortgagor corporation is or is not defunct.

Then after the sale, arises the question of deficiency and personal liability therefor. As far as Granada Apartments, Inc., is concerned, there could be no deficiency against it nor any personal liability unless it was shown that it had

assumed and agreed to pay the indebtedness, and there is no proof of that fact in this record.

As to the Court Trustee's second contention, it is true that the Chancellor did not approve the account of the Indenture Trustee in the sense that he might approve the account of a court officer.

At the time of the entry of the decree there was considerable question in the minds of some of the Chancellors as to whether or not mortgagees in possession having foreclosure suits pending in their courts should not be compelled to account directly to the court just as a receiver would have to do. It was finally decided that they should not. But that does not mean that the mortgagee in possession in the general accounting action between the parties does not have to give credit for the net rents realized, nor did it in any way change the practice which required the defendants to raise such points as they might have by way of objections to the account, and none having been raised, the general accounting as between the parties was approved—as the decree shows.

Since these matters were never incorporated into the rules of the local courts, it is not possible for us to state predecents. However, both Granada Hotel Corporation and Granada Apartments, Inc., were parties defendant to the foreclosure case and are bound by that decree by all prior orders entered by the court.

It is true, as stated by the Court Trustee at page 26, that fees equivalent to 4% of the gross income were retained by the Trustee banks for the period of their operation. The Trust Deed authorized the retention of reasonable management fees of the Trustee and its agent (R. 505). There is not a word of evidence that 4% was unreasonable and it is well within the allowances made to the Court Trustee in this proceeding with full reservation

to allow him additional fees on account of collateral litigation, including this litigation.

Nor did we stand on the allowances of attorneys' fees made by the state court in the foreclosure proceedings. We pointed out to the District Court that we were willing that it fix the reasonableness of the charge for services rendered by us in the state court proceedings on behalf of the Indenture Trustee, notwithstanding any existing limitations upon the Federal Court's right to review such allowances.

At the bottom of page 28 of his petition the Court Trustee says that it is plain that the Court of Appeals relied on the state court decree in reversing items 3, 4, 5 and 6 which are contained in Record 789.

Taking these items in order:

Item 3, amounting to $1,990.86 (R. 789), is made up of a number of relatively small sums which the Trustee held, not for the benefit of the owner or the mortgagor, but for the use of particular beneficiaries. Space does not permit discussion in detail, but we refer the court to the testimony of Toon at Record 329-332, which shows that these funds were earmarked in most instances for the government on account of taxes or for coupon holders who had not yet presented their coupons, although the funds to pay them were on deposit. The appointment of Mr. Woods as Court Trustee did not make him Indenture Trustee. Any items which the Indenture Trustee held belonging to third persons it had to continue to hold until it was in some manner relieved of the trusteeship.

Moreover, in the $1,990.86 item the court has included the item of $1,608.56 above mentioned, as will clearly appear from Toon's testimony. And it then double charges and includes the same amount in Item 6 at Record 789. This item of $1,608.56 represented a balance in the

account of the trustee in possession at the time of the entry of the decree of sale in the state court foreclosure proceedings more than four months before the bankruptcy. In that proceeding, as above narrated, the Trustee sought the statement of an account of the amounts due if from Granada Apartments, Inc., after allowing all just credits, deductions, and set-offs. The Trustee, after showing what was due it on account of bonds, coupons, and other indebtedness, showed the balance of $1,608.56 in its possession on account of rents collected, and this balance was by the decree credited against the indebtedness found due the Trustee (R. 511). In this situation it must be perfectly plain that the item did not belong to the debtor estate. We again refer to Toon's testimony (R. 329-332).

As to Item 4 (R. 789), "Without authority City National consented to and made wrongful payment from rentals upon Receiver's certificate, $7500, and also caused payments to Pick's successor August, 1933, $13,000"—

The idea is to charge City National Bank and Trust Company of Chicago with these amounts. When the item of $13,000 was disbursed in August of 1933, City National Bank and Trust Company of Chicago was not the Trustee and had nothing to do with the matter. It became Trustee January 4, 1935. Nor did its predecessor in trust disburse the $13,000. That item was paid under court order by Chicago Title and Trust Company, the then Receiver in the state court foreclosure, under these circumstances: After the litigation in respect of the fixture items had gone all the way to the Illinois Supreme Court where the title of the chattel mortgagee was upheld, the court having determined the items not to be fixtures, International and Industrial Securities Company, successor to Albert Pick & Company, was about to remove this property from the hotel premises. The property then had a value of at least

the amount set forth in the appraisal (R. 640). In addition, Albert Pick & Company had a claim against the Receiver for the use of the property pending litigation, and that claim was substantial. It also had a judgment against Granada Hotel Corporation for a substantial deficiency after the chattel mortgage sale, and that judgment was a lien which would prove embarrassing in the event of state court reorganization. If the settlement was not made and if the equipment was removed it would have been necessary to replace it new, for it had been specially designed, built, and installed for the apartments in the Granada. While it is true that on the law question presented in the fixture litigation the upper court held that the property could be removed without material injury to the premises, this was true only in the sense in which that expression is used in fixture law. There would have been plenty of injury and confusion with consequent loss of tenants. It was not at all like replacing loose furniture. This was built-in equipment. Pick's successor was willing to sell the equipment and to release its deficiency decree and its claim for rent on payment of $22,500. All of these facts were presented to the chancellor by way of petition (R. 608) and all of the parties in interest, including Granada Apartments, Inc., stipulated to the settlement. The chancellor was fully familiar with the situation; for the fixture trial had lasted for a month and he had personally visited the premises to make an inspection.

The money was to be provided, to the extent of $11,000 out of funds in the possession of the Receiver, and to the extent of $11,500 by moneys to be borrowed on Receiver's certificate. The $11,000 to be paid out of funds in the possession of the Receiver is part of the item of $13,000 set forth in the finding. The remaining $2,000 of that item

represents attorney's fees paid to counsel for the Indenture Trustee on account of services in the fixture litigation, as above related. The court will note that this $2,000 has already been included in Item 6 (R. 789), thus charging twice the same item. This goes to show how inaccurately the matter was considered. The Trial Court simply made the findings as presented by the Court Trustee without any consideration of the written objections filed.

But going back to the settlement of $22,500, the chancellor knew what the property was worth and that the amount paid in settlement was fair.

The Court Trustee will contend that the court was not advised that Indemnity Insurance Company of North America was to lend the money.

This was quite immaterial. Naturally, in August of 1933 nobody could be found to lend $11,500 on a Receiver's certificate excepting someone who had a special advantage to gain by doing so. In this case that someone was Indemnity Insurance Company of North America, and its motive for lending the money was to be released on the suggestion of damages then pending against it in federal court injunction proceedings in which it had executed bonds in favor of Albert Pick & Co. If that suggestion of damages had been pressed to conclusion, the amounts realized would not have belonged to the Granada estate. The proceeds would have been the property of Albert Pick & Co. or its successor. Ownership by Pick's successor of the fixture items was an entirely separate matter which remained to be disposed of regardless of the outcome of the motion on the suggestion of damages. Pick's successor was willing to drop the suggestion of damages of the above settlement on the fixture items could be effected, and it did so when the settlement was consummated.

So as to the $13,000 item City National Bank and Trust company had nothing whatsoever to do with the trusteeship or with the disbursement or with the transaction, and yet it is found to be liable.

Central Republic Trust Company, which was Trustee in August of 1933, did assent to the settlement, for it no doubt realized, as everyone else must, that the premises, built to be operated as a furnished kitchenette apartment hotel, could not be operated and kept revenue-producing unless they were furnished.

But the Circuit Court of Appeals for the Seventh Circuit passed upon this question in the matter of Granada Apartments, Inc., Debtor, appeal of Indemnity Insurance Company of North America, 104 F. (2nd) 528, and this Court refused to grant certiorari. The Petition for rehearing filed in this Court by the Courst Trustee in that case acknowledges that the decision is controlling in this case.

"As to management fees of $11,364.42"—This is item 5 (R. 789) and the finding is that City National charged and retained this amount for its fees for managing the property while trustee in possession. At the outset we again call attention to the Court Trustee's failure to distinguish between Central Republic Trust Company and City National Bank and Trust Company. That failure is again manifested here. The facts are, Central Republic Trust Company, as Trustee in possession, retained for the period of its operation, March 22, 1934 to January 4, 1935, $2,612.23, of which it paid an agent Hall $404.84. The amount represented 4% of the gross income.

City National Bank and Trust Company for the period of its operation as Trustee, January 4, 1935, to May 1, 1937, retained $8,325.15, or 4% of the gross income, of

which it paid its agent Hall $1,472.57. Of the amount retained all but $2,135.55 was for management prior to October 1, 1936. There remains due the Trustee for the period from May 1, 1937 to May 17, 1937, $188.15, which has never been paid.

The total amount of management fees to both Trustees, inclusive of the $188.15 and of the payments to Hall, is therefore $11,025.53, and not $11,365.42 as claimed.

The over-all charge, including the agent's, equalled 4% of the gross collection for the periods in question. This was a reasonable and customary charge (R. 417) and well within the rate recommended by the Chicago Real Estate Board and well within allowances many times approved in the District Court for similar services in like cases. Attorneys' fees incident to receivership management were eliminated through trustee possession.

The trust deed contained express authority for the retention of reasonable management fees of the Trustee and its agents (R. 505).

Central Republic Trust Company accounted for the sum so retained by it to the Superior Court, and its account was approved February 11, 1935 (R. 621).

City National accounted for all funds collected and disbursed by it through September 30, 1936, including the sum of $6,189.60 for management fees prior to October 1, 1936, and the state court decree of December 18, 1936 (R. 511) is binding on the Trustee in Bankruptcy, as is said order approving the account of Central Republic Trust Company.

The rate of compensation to the Court Trustee for his services in operating the same property for a period extending from May 17, 1937 to about November 20, 1937 was $7,500, as fixed and allowed by the District Court.

No reason is assigned and no showing is made why these fees should not have been retained by the Indenture Trustees. It is simply asserted that they were retained "without authority."

"As to the fees of the master in chancery $2,552.80" —These fees are included in Item No. 6 (R. 789). City National Bank and Trust Company of Chicago, as Successor Trustee, had gone to reference and hearing in the State Court—*this after Judge Lindley in the old bankruptcy proceedings had refused to restrain the foreclosure suit and had pointed out the advantages of going to decree* (R. 215). The Master's report was published and filed. His fees were fixed and allowed by the court and taxed as costs (R. 515). City National paid the costs so incurred out of trust funds in its possession, the action having been brought by it for the benefit of all bondholders. The voucher supporting this payment is in evidence. On these facts what possible basis is there for the surcharge of this item?

"As to the payment of $2,000 to counsel for the indenture trustee on account of services in the fixture litigation"—This amount also is included in the figure at Item 6 (R. 789), at which point City National is surcharged with precisely the same sum.

The payment was made by Chicago Title and Trust Company, Receiver, under court order of March 16, 1934, eight months before City National Bank and Trust Company ever became Successor Trustee. The payment was on account of legal services rendered the Trustee in the Trial Court, in the Appellate Court of Illinois, and in the Supreme Court of Illinois in seeking to establish that the carpet, ozite, in-a-door beds, kitchen and china cases were part of the real estate and thus part of the mortgage security. Counsel rendered further services in assisting

in the settlement with Pick, made after the litigation failed of its purpose, on order of court.

The charge was nominal in respect of the work obviously required. Its reasonableness was determined by the state court by order entered August 11, 1933 (R. 614).

In this situation on what possible theory could the account of City National Bank and Trust Company of Chicago be surcharged with this sum of $2,000?

"As to the fees and expenses of $4,025.29 incurred and paid in connection with the old 77B proceedings"—This sum too is included in Item 6 at Record 789. $3,500 of the amount is for fees paid to counsel for the Indenture Trustee and the Committee for services in connection with the old Granada bankruptcy proceeding ultimately determined by this Court to be invalid in the case of *Tuttle* v. *Harris,* 56 S. Ct. 416. The balance was for expenses and costs incurred in said proceedings.

We have stated the position of the Committee and the Indenture Trustee in respect of these proceedings. The action of the Committee and the Indenture Trustee was therefore justified and they were entitled to be reimbursed for the reasonable fees of their counsel. The services of counsel related to work in the District Court, the Court of Appeals, and this Court, briefs having been filed and oral arguments having been made in each of the three courts.

We submit that the charge was reasonable in respect of the amount and character of the services required, that there is no evidence whatsoever of record to show that the charge is in any way unreasonable, and accordingly the Trial Court's surcharge in this amount may not be sustained.

As to the sum of $1,608.56 which makes up the balance

of Item 6 (R. 789), as above noted, it was credited against the decree indebtedness in the general accounting between the parties.

The total amount involved in Item 6 at Record 789 is $10,186.65. We submit that on the record there was just no basis on which the Court could find this amount due from City National Bank and Trust Company. As a matter of fact, the Court did not purport to do so in its oral opinion but later of course adopted the Court Trustee's findings as presented.

Conclusion.

Summarizing, in conclusion, we state that the Court Trustee has failed to sustain the burden which he has to show that the material findings were not, as found by the Court of Appeals, clearly erroneous; that rather he is merely reiterating the findings or his own pleadings but not any supporting evidence; that in the few instances in which he has referred to the record we have taken pains to show that the opinion of the Court of Appeals should be sustained; and that the case of *Butzel* v. *Webster Apartment Building*, 112 F. (2nd) 362, has nothing to do with the matter and that the Court Trustee's motion to dismiss having been properly overruled, there are therefore no grounds on which this Court will entertain a petition for certiorari.

We have shown not only that the actions of City National Bank and Trust Company of Chicago since the time of its appointment as Successor Trustee in January of 1935, were justified but that the alleged fraud on which the Court Trustee relies did not in fact exist and finally that the foreclosure decree of sale is quite valid and binding on the Debtor, and on Granada

Apartments, Inc., and that although the accounting of the Trustee was not approved as that of a court officer, nevertheless the accounting as between the parties was approved and is binding.

In short, without any showing on our part it affirmatively appears from the Court Trustee's petition that here again as in the Circuit Court of Appeals and as mentioned in the opinion of that Court, he has no desire to attempt to support the hand-tailored fact findings which he prepared ostensibly pursuant to the direction of the Trial Court given in its oral opinion. Rather, he merely reiterates those findings, together with his pleadings, which he thinks, coupled with vituperative comment against the Bank, Committee and counsel, will lead the Court to grant the writ. Should the Court care to do so on the basis of the petition filed we shall reply to those charges. We do not find it necessary to do so at this time.

VINCENT O'BRIEN,
JOHN MERRILL BAKER,
TRACY WILSON BUCKINGHAM,
Counsel for Respondents.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

Nos. 281-282

IN THE MATTER OF GRANADA APARTMENTS, INC.,
DEBTOR.

WEIGHTSTILL WOODS, COURT TRUSTEE,
Petitioner,

vs.

CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AND OTHERS,
Respondents.

RESPONSE TO PETITIONER'S MOTION FOR LEAVE TO DISPENSE WITH PRINTING THE ORIGINAL TRANSCRIPT OF EVIDENCE.

VINCENT O'BRIEN,
JOHN MERRILL BAKER,
TRACY WILSON BUCKINGHAM,
Counsel for Respondents.

THE GUNTHORP-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

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Respondents.

RESPONSE TO PETITIONER'S MOTION FOR LEAVE TO DISPENSE WITH PRINTING THE ORIGINAL TRANSCRIPT OF EVIDENCE.

Petitioner asks the court to excuse the printing of four volumes of evidence and exhibits on the ground that they were not properly a part of the record in the Circuit Court of Appeals and were sent to this court merely as an original exhibit pursuant to Rule 10(4) of this court.

At pages 3 to 7, inclusive, of our answer to the petition for certiorari in Case No. 310 and at pages 5 to 10, inclusive, of our answer to the petition for certiorari in Case No. 179 we have shown at length that the four volumes were properly made a part of the record before the Circuit Court of Appeals not only in our appeals there docketed as Numbers 6986 and 7060, Numbers 281 and 282 here, but also in the Court Trustee's appeal there docketed as No.

7061, No. 310 here, and in our appeal there docketed as No. 7086, No. 179 here. We will not burden the court by repeating the matter there set forth except to call attention to the fact that, contrary to the Court Trustee's sworn statement the four volumes were marked filed in each of the aforementioned appeals, as will appear from inspection thereof; that the narrative statement of the evidence became a part of the record in the Circuit Court of Appeals in causes Nos. 6986 and 7060, Nos. 281 and 282 here, (but not in the other two appeals) by order of the Circuit Court of Appeals, and that it was not merely lodged with or handed to the clerk of that court as petitioner states; that contrary to petitioner's statement the four volumes were certified by the District Court judge and by the clerk as being a true and complete transcript of the proceedings in the case and that the four volumes were not sent to this court under Rule 10(4) as an original exhibit but, as an inspection of the Trustee's motion (Rec. 1001) and the order of the Circuit Court of Appeals in respect thereto (Rec. 1003) will disclose, as the original transcript of record sent to the Circuit Court of Appeals from the District Court by special order.

Rule 10 of this court relating to praecipes is not applicable to the record which shall accompany petitions for certiorari. On the contrary, Rule 38(1) says that a petition for certiorari shall be accompanied by a certified transcript of the record in the case, including the proceedings in the court to which the writ is asked to be directed. This we understand to mean the complete record which was before the Circuit Court of Appeals. And as the four volumes were a part of the record in the case in the Circuit Court of Appeals a copy of the complete record was not served on us within the ten days prescribed by Rules 38(3) and the petition should for that reason be dismissed.

However, we do not desire to stand on technicalities and have no objection to the court excusing the printing of the four volumes, as we agree with the petitioner that printing them at this time would serve no useful purpose. For of what value would it be to the court to have several thousand printed pages of testimony and exhibits before it when the petition for certiorari makes no reference thereto to support petitioner's contention that the findings of the District Court are adequately supported.

We do, however, strenuously object to the motion being granted on the ground that the four volumes were not properly a part of the record in the Circuit Court of Appeals or that they were sent there or here as an original exhibit, and suggest that if the printing is to be excused and the petition for certiorari is granted petitioner and respondents be given leave to refer to the testimony and exhibits contained in the four volumes provided they set forth in an appendix to their brief those parts of the testimony or exhibits to which they make reference.

We wish to note that the narrative statement of evidence which has been printed as a part of the record for purposes of the petition for certiorari in this case was never made part of the record in the cases pending here on petitions for certiorari as Nos. 179 and 310. However, as above noted the four volumes were made a part of the record in each of those cases and have never been printed, nor has the failure to print ever been excused.

Respectfully submitted,

VINCENT O'BRIEN,
JOHN MERRILL BAKER,
TRACY WILSON BUCKINGHAM,
Counsel for Respondents.

STATE OF ILLINOIS,
COUNTY OF COOK. } ss.

JOHN MERRILL BAKER, being first duly sworn, states that he has prepared the foregoing response and brief in opposition to the motion of petitioner; that he is familiar with the records in the several courts and that the statements made in the foregoing response and brief are true to the best of his knowledge and belief.

JOHN MERRILL BAKER.

Subscribed and sworn to before me this 25th day of September, 1940.

EDITH JOHNSON,
Notary Public.

(NOTARIAL SEAL)

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. 281

IN THE MATTER OF
GRANADA APARTMENTS, INC.,
Debtor.

WEIGHTSTILL WOODS, COURT TRUSTEE,
Petitioner,

vs.

CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO, ET AL.,
Respondents.

No. 282

WEIGHTSTILL WOODS, COURT TRUSTEE,
Petitioner,

vs.

CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO, ET AL.,
Respondents.

BRIEF FOR RESPONDENTS.

Counsel for Respondents:
VINCENT O'BRIEN,
JOHN MERRILL BAKER,
TRACY WILSON BUCKINGHAM,
(*Defrees, Buckingham, Fiske & O'Brien*),
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INDEX.

Statement of the Case 2

Prior to the Current Bankruptcy Proceedings 2

The Present Proceedings in the United States District Court 18

Proceedings in the Circuit Court of Appeals 21

Points and Authorities 23

I. Respondents faithfully discharged their duties as fiduciaries and performed beneficial services for which they are entitled to be compensated 26

II. The United States Circuit Court of Appeals did not reverse any of the findings of the trial court which were not contested 63

III. The United States Circuit Court of Appeals carefully analyzed the evidence and properly applied Rule 52 of the Rules of Civil Procedure 66

IV. The United States Circuit Court of Appeals did not err in denying the Court Trustee's motion to dismiss Appeals 7060 and 6986 69

V. The United States Circuit Court of Appeals did not rule that the District Court was without power to review, readjust and disallow fees allowed by decree of the state court 74

Conclusion 75

Appendix "A" 77

AUTHORITIES.

Cases.

American Central Ins. Co. v. Harmon Knitting Mills, 39 Fed. (2d) 21 (C. C. A. 4) 25
Chicago Title and Trust Co. v. Schwartz, 339 Ill. 184.. 32
Connecticut Ry. & Lighting Co. v. Palmer, 305 U. S. 493, 59 S. Ct. 316 24
Cromwell v. Curtis, 99 Fed. (2d) 810 (C. C. A. 2) 23
In re Albert Dickinson Co., 104 Fed. (2d) 771 70
Dickinson Industrial Site v. Cowan, 309 U. S. 382, 60 S. Ct. 595 ..... 24, 69
Dooley v. Pease, 180 U. S. 126 67
French v. Hall, 84 N. E. 438 (Mass.) 23
General Talking Pictures Corp. v. Western Electric Co., 304 U. S. 175, 58 S. Ct. 849 24
Guilford Const. Co. v. Biggs, 102 Fed. (2d) 46, 47 (C. C. A. 4) 25
Indemnity Ins. Co. of N. A. v. Granada Apts., Inc., 104 Fed. (2d) 528 (certiorari denied 308 U. S. 557) 62
In re Kramer's Estate, 15 N. Y. S. (2d) 700, 707 24
Lerk v. McCabe, 349 Ill. 348 32
Lima First American Co. v. Graham, 6 N. E. (2d) 33, 38 (Ohio) 24
London v. O'Dougherty, 102 Fed. (2d) 524 70
Magruder v. Drury, 235 U. S. 106 23
In re Milwaukee Lodge No. 46, B. P. O. E., 83 Fed. (2d) 662 (C. C. A. 7) 23
Morley Const. Co. v. Maryland Casualty Co., 57 S. Ct. 325, 328 25
Metcalf v. Metcalf, 286 Ill. App. 10 32
In re Paramount Publix Corporations, 83 Fed. (2d) 406 23

In re Peacock Food Markets, 108 Fed. (2d) 453..... 67
In re Prima Co., 98 Fed. (2d) 952 (C. C. A. 7)..... 25
J. M. Robinson & Co. v. Belt, 187 U. S. 41, 23 S. Ct. 16.. 23
Roberts v. Michigan Trust Company, 262 N. W. 744 (Mich.) 24
Scavenger Service Corp. v. Courtney, 85 Fed. (2d) 825. 67
Springfield Safe Deposit & T. Co. v. First Unitarian Soc., 200 N. E. 541 (Mass.)..... 23
Star Farm Mut. Automobile Ins. Co. v. Bonacci, 111 Fed. (2d) 412 (C. C. A. 8)..... 25
Tuttle v. Harris, 297 U. S. 225.....17, 38
U. S. v. Tyrakowski, 50 Fed. (2d) 766..... 67
Wenstrand v. Albert Pick & Co., 38 Fed. (2d) 25, 281 U. S. 768.....6, 10, 76

Texts.

Bogert on Trusts, Vol. 3, p. 1724.....24, 33
Restatement of the Law of Trusts, Art. 170 Q.....24, 33
Scott on Trusts, Vol. 2, Art. 170.16..... 24

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BRIEF FOR RESPONDENTS.

MAY IT PLEASE THE COURT:

This is a case in which the law points are few and comparatively simple. As the case really turns on the facts and as the petitioner's statement is misleading and materially inadequate we believe that we can be of maximum assistance to the Court by setting forth in some detail a correct chronological record statement of what was done by respondents in connection with the debtor's estate and why it was done.

STATEMENT OF THE CASE.

Prior to the Current Bankruptcy Proceedings.

The Granada Hotel was one of a group of three built in 1924 by Fred Mateer. The other two are known as the Lincoln Park Manor Hotel and the Arlington Hotel. Arlington Hotel Corporation owned the Arlington and Lincoln Park Manor Building Corporation owned the Lincoln Park Manor. Granada Hotel Corporation owned the Granada. Mateer owned substantially all of the capital stock of Mateer Hotels, Inc., which in turn then owned substantially all of the common stock of the three hotel corporations (R. 633).

In 1924 the Arlington and Lincoln Park Manor Hotels were built with the proceeds of separate construction loans respectively made by the owner corporations and respectively secured by trust deeds to Chicago Trust Company, as Trustee. At that time the Granada Hotel basement was constructed, equipped and covered over. It housed the central machinery for supplying heat, refrigeration, hot and cold water to itself and to the other two hotels through pipes connected with them by tunnels. Sometime after the Arlington and Lincoln Park Manor Hotels were in operation the Granada Hotel itself was built (R. 402). Part of the cost was provided by the proceeds of first mortgage bonds aggregating $550,000 made by Granada Hotel Corporation (predecessor in title of the debtor) secured by a trust deed in the nature of a mortgage also to Chicago Trust Company, as Trustee. Most of the furniture, furnishings and equipment to be used in the hotel was purchased by Granada Hotel Corporation from Albert Pick & Company for $107,096.84, of which $24,000 was paid in

cash and the balance by notes aggregating $83,096.84, secured by a chattel mortgage on the personalty so purchased (R. 552). Some of the equipment and furniture in the premises had not been furnished by Pick and was not encumbered (R. 500).

In 1924 heat, water, refrigeration and other services were provided for the three hotels under separate written agreements with Mateer Hotels, Inc. to run for thirteen years, compensation to be on a basis of cost plus 15% for profit. It was provided in each agreement that no amendment or change might be made unless first approved by the Indenture Trustee (R. 639, 403, 399).

On September 1, 1928 the Granada first mortgage was refunded by a new first mortgage of $525,000, of which $25,000 was subordinated. The new first mortgage was underwritten 60% by Cody Trust Company and 40% by Chicago Trust Company, which again was named as Indenture Trustee. A new second mortgage of $360,000 was also made at that time (R. 474, 505).

Though the record is silent as to the occasion for refinancing it is evident that it was not done "to protect Chicago Trust Company and all other persons who participated by placing their names in the prospectus to the bondholders in 1924"; for, contrary to Petitioner's Findings 14, 15 and 16 (R. 773) it does not appear that the 1924 prospectus had represented to the bondholders that the personalty was part of the security for the bond issue loan (see prospectus, R. 334; Transcript 762). Nor is there any evidence that the personalty was to be paid for out of the proceeds of the loan.

In the first instance Chicago Trust Company, as underwriter, intended in 1928 to require that the loan agreement provide for the retirement of the Pick chattel mortgage, but it appearing that the proceeds of the loan would be insufficient to pay the Pick indebtedness and to retire the old first

mortgage indebtedness, Chicago Trust Company upon being persuaded by Cody Trust Company that the Pick mortgage was invalid and that the attorneys for Cody Trust Company could establish its invalidity, did not further insist upon that requirement (R. 499). Rather, it entered into an agreement with Cody Trust Company which, among other things, provided that if a first chattel mortgage on the furniture could not be delivered by February 9, 1925 as additional security for the new first mortgage bond issue, second mortgage bonds up to $50,000 would be left on deposit with Chicago Trust Company to protect them until such time as said first chattel mortgage was executed and delivered. $30,000 were actually deposited (R. 536).* Cody Trust Company did not undertake to *pay* the Pick indebtedness.

The bonds which were left on deposit were retained when the Pick claim was not defeated. No provision was made for participation of these bonds in the plan submitted by the committee in these 77-B proceedings. The committee procured an order on July 14, 1937 that the bonds so deposited were to be cancelled on the entry of the final decree (R. 100, 348).

Contrary to the statement at page 49 of petitioner's brief upon the merits, Defrees, Buckingham, Jones & Hoffman were not the attorneys who said that the Pick chattel mortgage was invalid or who were retained by Cody Trust Company to establish its invalidity.

Both Chicago Trust Company and Cody Trust Company represented in their separate prospectuses relating to the 1928 first mortgage bond issue that "in addition, and furnishing added security, the furniture and equipment in the Granada are valued at $88,000" (R. 516, 334).

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* The pages at which this and certain other court Trustee's Exhibits were offered do not appear of record. Where the pages do appear they are given.

There is no evidence showing the value in 1928 of the personalty purchased from dealers other than Albert Pick & Company, but prior to the making of the refunding loans the sum of $53,000 had been paid on account of the Pick indebtedness (R. 552). It may well be that what was meant was that the value of the Corporation's equity in the furniture and equipment purchased from Pick plus the value of any furniture and equipment bought from others was in fact $88,000, and thus that the representation was true.

Whatever was meant, and whether the representation was true or false, the fact is that the attorney respondents did not learn of the contents of the circular until it was produced at the trial and, as will be shown hereafter, there is no evidence that any of the respondents knew of it before then.

In the spring of 1929 Granada Hotel Corporation conveyed all of its property to Granada Apartments, Inc., then organized, which assumed and agreed to pay the first and second mortgage indebtedness then outstanding but which did not assume or agree to pay the indebtedness to Albert Pick & Company. Defrees, Buckingham, Jones & Hoffman prepared the legal papers for the incorporation of the new company (R. 496).

On November 13, 1928 a decree of sale was entered in proceedings which had been brought in the Circuit Court of Cook County, Illinois, by Albert Pick & Company against Granada Hotel Corporation to foreclose its chattel mortgage (R. 553). On November 23, 1928 one Wenstrand, a nominee of Cody Trust Company, claiming to own the personal property described in that chattel mortgage by virtue of a purchase made by him July 7, 1928 at a Sheriff's sale under an execution against Granada Hotel Corporation, filed his complaint in the United States District Court to restrain the sale under Pick's foreclosure decree (R. 553).

His attorneys below were Mort D. and Frank Goldberg who had represented to Cody Trust Company that the Pick chattel mortgage was invalid (see *Wenstrand* v. *Albert Pick & Co.*, 38 Fed. (2d) 25). In this Court, his attorney was Daniel M. Dever (see *Wenstrand* v. *Albert Pick & Co.*, 281 U. S. 768).

Albert Pick & Company thereupon filed its suggestion of damages against Wenstrand and his surety, Indemnity Insurance Company of North America, in relation to the injunction bonds which they had furnished. It claimed attorneys' fees and damages on account of depreciation in sales value of the furniture pending the litigation (R. 359).

When the validity of the Pick chattel mortgage had been so established as against Wenstrand, Pick proceeded to sale under the foreclosure decree on June 11, 1930 (R. 554).

On June 10, 1930 the Indenture Trustee under the Granada mortgage, wishing to prevent the disorderly removal of the furniture and any removal of the built-in equipment which it contended to be fixtures and thus part of the first mortgage security, had William A. Thuma file a bill in the Superior Court of Cook County against Granada Hotel Corporation and Granada Apartments, Inc., on items in default under the second mortgage, there being no defaults under the first mortgage (R. 475). On his motion Chicago Title and Trust Company was appointed receiver. The receiver was directed not to interfere with the existing management but merely to collect the net income. January 12, 1934, the receiver was directed to take full possession of the Granada property. The Trustee under the first mortgage was joined as a defendant to prevent any claim that the receiver was appointed for Thuma's exclusive benefit. Thus the prior interest of the first mortgage trustee in the rents and income was preserved (R. 424).

Defrees, Buckingham, Jones & Hoffman represented both Thuma and the Trustee.

Pick intervened to claim the property covered by its foreclosure decree. By order of court entered June 24, 1930 the receiver surrendered to Pick possession of the loose furniture over a period of time which permitted the refurnishing of the apartments without loss of tenants (R. 475). The replacement furniture was purchased by Granada Apartments, Inc., for $41,000 on a conditional sales contract for $35,000, reduced to $3,000 at the time of the filing of the present 77B petition (R. 480). The conditional sales contract was held by Continental Illinois National Bank & Trust Company which later filed a claim in the bankruptcy proceeding for that balance. The plan prepared by respondents provided for the payment of that claim in cash.

The Superior Court reserved jurisdiction to determine whether the equipment built in during the construction of the hotel belonged to Pick or whether it was part of the real estate first mortgage security (R. 475).

The equipment consisted of large kitchen cases which were delivered to the hotel knocked down. Provision for them had been made in the original building plans and they were specially built for the premises by the manufacturer and installed during the construction of the building. Each case contained a refrigeration unit which was connected up with the central brine system by means of pipes extending through the corridor walls. There were also in-a-door beds and the wooden paneling to which they were attached was especially designed for that type of bed. No manufacturer other than Pick's subsidiary made the same bed or kitchen case and the subsidiary was no longer in business nor were any more of the kitchen cases or beds available. The china cases were likewise installed during the construction of the building and were used as "dividers" to separate the dining portion from the kitchen portion of each room in which used (R. 359, 369).

On June 15, 1932 decree was entered in favor of Albert Pick & Company as to this equipment (R. 552). On appeal by the Indenture Trustee, the decree was affirmed by the Appellate Court of Illinois and certiorari was denied by the Supreme Court of Illinois in 1933 (R. 476).

In the meantime and on July 25, 1931 Chicago Trust Company had consolidated with Central Trust Company of Illinois to form Central Republic Trust Company which thereby became successor Trustee under the first mortg. ge trust deed and was substituted for Chicago Trust Company as defendant in said Superior Court proceedings (R. 475).

In 1932 Central Republic Trust Company had made a large loan ($80,000,000 to $90,000,000, R. 354) from Reconstruction Finance Corporation, to secure which it had pledged all of its assets (R. 476). It ceased to do a banking business but continued to conduct its trust business (R. 183, 194). By 1933 Cody Trust Company was insolvent (R. 476).

On July 31, 1933, an inventory and appraisal of the furniture and equipment in the Granada Hotel was procured by the agent of the receiver, Chicago Title and Trust Company, from independent appraisers. It showed that the value of the kitchen and china cases, in-a-door beds and the ozite and carpeting was $18,000 based on the cost of replacement with articles of identical quality less depreciation, that is, the market value to the hotel based on the value new, less depreciation since 1924, the date of installation (R. 640, 421). The District Court, on the trial below, refused to admit the appraisal because of the basis on which it was made, taking the position that the value of the property to the estate was its "junk" value when removed, rather than its value in place in the hotel (R. 361, 362, 421).

After certiorari was denied negotiations to settle the Pick claim were begun. Pick finally agreed to take $22,500

for the built-in equipment, ozite and carpeting, to satisfy a deficiency decree in excess of $50,000 against Granada Hotel Corporation, to dismiss proceedings then pending for the appointment of a receiver for that corporation and to waive its claim for three years rent for the use of the property pending the state court litigation. Pick was then informed that there was not sufficient cash on hand to pay the settlement price in full and that some arrangement would have to be made to raise the necessary funds. The only person who might have been interested in lending the money was Indemnity Insurance Company of North America. Accordingly we again talked with counsel for Albert Pick & Company, explained that we could not get the money unless the Surety Company would lend on a receiver's certificate of indebtedness which we might be able to get it to do if the suggestion of damages was dismissed. We assigned legal reasons why damages could not be proved (R. 477). Pick then agreed to dismiss its suggestion of damages (R. 363). Thereupon we talked to counsel for the Surety Company which, after some delay, agreed to advance $11,500 on security of a receiver's certificate of indebtedness, the suggestion of damages to be dismissed (R. 476, 477).

On August 11, 1933, Central Republic Trust Company, as Trustee, filed its petition in the Superior Court proceedings and asked that the receiver, Chicago Title & Trust Company, be authorized to make the settlement with Pick and for that purpose to issue a receiver's certificate of indebtedness for $11,500. The court was not informed by the petition that Indemnity Insurance Company of North America was to purchase the receiver's certificate or that it was to be released of its liability on the suggestion of damages. The Court was informed by the petition of the value of the property, that its removal would not only injure the premises but result in the loss of most, if not all, of the tenants and

that it would take two or more months in which to remove and replace the property. Its attention was also called to Pick's claim for rental for the use of the property for more than three years pending the litigation, which claim the Court had theretofore reserved jurisdiction to determine. It was advised that Pick's deficiency decree against Granada Hotel Corporation would be satisfied and that pending proceedings against that corporation for the appointment of a receiver would be dismissed. During the trial of the fixture litigation the judge had personally visited the premises to witness the effect of the removal of these items which at his direction had been taken out of one of the apartments (R. 608, 377). The settlement was approved and the receiver's certificate of indebtedness was issued and purchased by Indemnity Insurance Company of North America. The suggestion of damages was dismissed.

In July, 1933 Central Republic Trust Company, as Trustee under the first mortgage trust deed, filed its cross-bill of complaint in the same proceedings against the defendants, Granada Apartments, Inc., and Granada Hotel Corporation and others, to foreclose the first mortgage on behalf of all bondholders on account of defaults which occurred in 1932. At that time Defrees, Buckingham, Jones & Hoffman withdrew as counsel for Thuma (R. 480).

Hiram Cody and Riddle were indemnitors in respect of the bonds given by Wenstrand in the case of *Wenstrand* v. *Albert Pick & Co.* Before Indemnity Insurance Company of North America agreed to buy the receiver's certificate it had entered into an agreement with said indemnitors that if the certificate were not paid off, they would reimburse the Surety Company. But these facts were not known by Central Republic Trust Company, by City National Bank and Trust Company, by the bank members of the Committee (R. 221, 230), or by respondent attorneys until the trial of the proceedings below (R. 499).

The Surety Company had produced the agreements from its home office files during its separate litigation with the Court Trustee.

The petitioner refers to testimony of O'Brien at R. 476 to show that the attorneys did have knowledge of these facts. But O'Brien was then testifying at the separate fee hearing before the Master after the conclusion of the trial before the Court. The knowledge of the transaction of which he spoke before the Master was the knowledge gained at the prior hearing before the Court.

On October 5, 1932, City National Bank and Trust Company of Chicago was organized. It took over the deposit liabilities of Central Republic Trust Company and from that date on provided space and personnel required in servicing the trusts of Central Republic Trust Company. It maintained a reorganization division and furnished facilities and personnel to committees, consisting of officers and employees of the bank, and formed for the protection of the holders of defaulted first mortgage bonds which had been underwritten by Chicago Trust Company or Central Trust Company of Illinois. By agreement with the committees (including the one in this case), the bank was to be reimbursed for the cost of furnishing facilities and personnel and it was to act as depositary. The reorganization division was not organized to make money nor did it try to. Its effort was merely to get out its cost (R. 211). The cost was determined by the number of people employed in the reorganization department, the space occupied, the facilities placed at the disposal of the committee, including regular office service, telephone, filing services, credit information, insurance data and service, stenographic help and other items. It did not include anything for the bank members of the committee individually. None of the members was to receive any fees. The cost was apportioned to specific issues on the basis of the size of

the issue as compared to the aggregate total of the bonds serviced under all issues (R. 469). By the terms of the deposit agreement, the committee was entitled to be reimbursed for all disbursements, expenses and liabilities, including counsel fees made or incurred by it or its agents in exercising any powers and performing any duties (R. 21, 34).

In the case of the Granada, the bank caused a committee to be formed on April 25, 1933, consisting of two of its officers, William G. Sturm and Charles S. Tuttle, neither of whom had had any connection with Chicago Trust Company or anything to do with the underwriting of the bonds (R. 201, 216), and Edward S. Clark and Lewis W. Riddle, both of whom were then officers of Cody Trust Company (R. 9). Later Clark resigned and Albert J. Peterson was appointed in his place and E. A. Kilmer was added to the committee. Peterson had been an employee of Cody Trust Company and Kilmer was a dealer in Elkhart, Indiana, who had distributed some of the bonds underwritten by Cody Trust Company. Defrees, Buckingham, Jones & Hoffman who also represented the Committees and the Indenture Trustees for the Arlington and Lincoln Park Manor, were retained by the Granada committee as its counsel (R. 487).

Petitioner refers to Johnson's testimony (R. 436) as contrary. The unprinted transcript (928-929) shows his additional answer as follows:

> "Well, I think, to make this thing clear, you see the committee—the record shows the committee was formed in April, 1933, and these proceedings were started away back in 1932; as a matter of fact, that appeal was taken up in 1932. I think this proceeding goes to 1930 and 1931."

Johnson was referring to the original retention of counsel in the Thuma-Granada fixture litigation and not to the later retention of counsel in 1933 by the committee.

By 1933 Mateer and Mateer Hotels, Inc. had lost control of all three properties. The common stock of Granada Apartments, Inc. was then owned by Cody Trust Company which also owned a substantial amount of the Granada second mortgage bonds. By December, 1933 title to these bonds and to the stock had passed to Charles H. Albers, the receiver of Cody Trust Company. The Arlington Hotel had been sold to one Barton in 1927, but in 1933 was owned by Warren-Hart Apartments, Inc. The title to the Lincoln Park Manor Hotel had been acquired by one Gehm through foreclosure proceedings on a second mortgage which he had held.

Cody Trust Company had had a substantial investment in the Granada and from time to time had raised the amount charged the Arlington by the Granada for heat, water and refrigeration to as much as $900 per month, thus, without the consent of the indenture trustee required by the original contract (R. 639, 403), increasing the rate which had existed in 1924 (R. 404, 405). In December of 1933, while Chicago Title and Trust Company was receiver of the Granada and while the owner, Warren-Hart Apartments, Inc., was in possession of the Arlington, the charge for heat, water and refrigeration furnished to the Arlington was fixed at $600 per month. Central Republic Trust Company, trustee under both the Arlington and Granada issues, participated in the conferences by which this was done and made due investigation to determine that the amount fixed was reasonable and proper (R. 295-299). On January 4, 1934, a written agreement was executed by Granada Apartments, Inc., and Warren-Hart Apartments Building Corporation, fixing the charge at $600 per month (R. 626, 406). This agreement was drafted by the attorneys for respondents.

On March 16, 1934 Chicago Title & Trust Company, Receiver, surrendered possession of the Granada property to Central Republic Trust Company, as Trustee, which was

directed by the Court to assume and to pay the balance due on the receiver's certificate of indebtedness, amounting to $7,011.01. When the present 77B petition was filed the balance amounted to $4,000 and Indemnity Insurance Company of North America, the holder of the certificate, filed its claim for that balance. On April 26, 1934 the final report and account of Chicago Title & Trust Company, Receiver, was filed and approved and its fees were paid in the sum of $3,000, the gross collections for the period of the receivership having been about $200,000 (R. 480).

On November 20, 1934 William L. O'Connell was appointed Receiver of Central Republic Trust Company by the Auditor of Public Accounts of the State of Illinois (R. 285), and on January 3, 1935 he resigned the trusteeship on behalf of Central Republic Trust Company in said foreclosure proceedings. On petition of the Committee filed in the foreclosure proceedings, City National Bank & Trust Company was appointed successor Trustee under the Granada first mortgage trust deed by order of Court. It entered into possession of the Granada to operate the same as successor Trustee on January 4, 1935.

On February 11, 1935 the final report and account of O'Connell on behalf of Central Republic Trust Company, as Trustee, was filed and on due notice to all parties approved by the Superior Court. The successor Trustee made no objection, the account having been correctly stated (R. 621, 377).

In the meantime City National Bank & Trust Company had likewise succeeded Central Republic Trust Company as Trustee under the Arlington first mortgage trust deed and had taken possession of the Arlington property. Its predecessor had taken possession on December 31, 1933.

So that, as of January 4, 1935, City National Bank & Trust Company of Chicago was Trustee in possession not

only of the Granada but of the Arlington. It owned none of the indebtedness of the corporations which owned those two hotels. It had no personal interest. The bonds were held by the public (R. 67, 181, 513).

As Trustee of the Granada it continued to charge the Arlington $600 a month, the amount which had been fixed in December of 1933. It continued to operate Granada as mortgagee in possession until it surrendered possession to the Court Trustee appointed in these bankruptcy proceedings.

The decree of sale upon the cross bill filed August 11, 1933, by the Trustee under the Granada first mortgage was not entered until December 18, 1936 (R. 511, 377).

Prior to that and from the time of its organization in April, 1933, the Committee had given constant attention to available plans of reorganization; for there could be no sale in the state court proceedings, except at a sacrifice, without a plan. The witness Johnson, Secretary for the Committee, testified at length on the subject (R. 425-430). Among the plans considered and investigated were the following:

No. 1. "A full foreclosure plan" through which the depositing bondholders would bid and on expiration of the 15 month redemption period procure a Master's deed. It could not be financed because there were but 60% of the bonds on deposit and thus the Committee would be required to raise cash to pay the holders of about $200,000 of non-deposited bonds their pro rata share of the sale price, in addition to the unpaid general taxes and the furniture and equipment indebtedness.

No. 2. A plan of reorganization in which the Committee and all junior interests would join, the bid to be made at a low price and to be followed by immediate redemption through control of the junior interests—it was impossible to get the junior interests together, particular difficulty being experienced in respect of the holders of the preferred stock.

No. 3. A plan by which the Indenture Trustee would bid in for all of the bondholders and at the expiration of the redemption period hold title for all of them. Early in 1934 the Appellate Court of Illinois held that the Trustee had the power and was under the duty so to bid notwithstanding the absence of express provision in the indenture. To take advantage of this decision, the foreclosure bill was amended to ask the instructions of the Court as to whether the Trustee should bid. The first mortgage bondholders were then joined as parties (R. 480). On appeal that decision was reversed by the Supreme Court of Illinois.

No. 4. 77B—From the time of its enactment in 1934 the Committee surveyed its corporate real estate issues and reorganized many of them in the Federal courts. The people who controlled the Granada title did not want a reorganization. They wanted to buy the bonds at low prices and own the property free and clear. Hence they would not bring a voluntary petition—though requested—and there were no grounds for an involuntary petition until Rosenberg had obtained a judgment and the appointment of a general receiver. That was the basis of jurisdiction for the involuntary petition below. (See "Litigation Chart", p. 93 Petitioner's Brief.)

No. 5. The sale of the deposited bonds. There was a syndicate which had acquired control of the Granada title and it claimed to control the Lincoln Park Manor title and was attempting to buy from the RFC the junior interests on the Arlington. If it was successful it planned to offer a low price for the bonds, otherwise to force foreclosure sales at which it could buy at low prices and, through control of the junior interests, redeem. It could not get the money unless all three properties could be secured. To prevent the consummation of that deal, the Bank reorganized the Arlington separately giving the RFC a 12½% participation and the plan of the syndicate fell through.

Before then, the Committees for all three properties had considered a unit reorganization which would involve getting the three titles all in one owner and the issuance of common securities to the different security holders. The Lincoln Park Manor was individually owned and 77B was

not available as a remedy. The title to the furniture and many of the first mortgage bonds were under control of a group which was unwilling to have any reorganization. The Committees concluded that separate reorganizations were necessary (R. 213).

At the time the present 77B proceedings were brought and for a long time before, all of the stock and many of the junior interests in the Granada were controlled by the same group who did not want a reorganization and who made objections to the approval of the 77B petitions below (R. 596-7, 375).

Late in 1934 three creditors brought an involuntary 77B petition against Granada Apartments, Inc. There was no equity receivership pending. There was no act of bankruptcy. The corporation itself, although requested (R. 482, 353), refused to file an answer in the nature of a voluntary petition. The Committee and City National Bank and Trust Company of Chicago opposed the proceedings only after efforts to cure the defects, and failing in that, only after advice of its counsel that a good title could not come out of those proceedings, which advice had been confirmed by the Chicago Title and Trust Company insofar as the issuance of any guarantee policy was concerned (R. 482).

This Court held that the District Court lacked jurisdiction. (*Tuttle* v. *Harris*, 297 U. S. 225.)

Neither the Committee nor the indenture trustee opposed the approval of the petitions in the present 77B proceedings (R. 341, 375, 597).

The Present Proceedings in the United States District Court.

On May 17, 1937, the 77B petitions were approved as properly filed. There were many objections to the approval of the petitions but not by the Committee nor the Indenture Trustee nor their counsel (R. 595-598). Weightstill Woods was named as temporary Trustee and ordered to take possession of the property.

The Indenture Trustee which was then in possession presented a petition showing its right to continue in possession until the Plan was confirmed (R. 600-601). Its reasons for so doing will be discussed in the Argument. When the Court stated that it would dismiss the petitions if the Indenture Trustee successfully maintained that position, it waived the point and surrendered possession in the interest of a speedy reorganization (R. 223).

The Committee brought in its Plan of Reorganization by May 24, 1937 (R. 51). It was confirmed July 14, 1937, assents from approximately 60% of the First Mortgage Bondholders having been procured and filed by the Committee (R. 102).

August 30, 1937 the Indenture Trustee filed its Report and Account (R. 111). The Report set forth much of the matter hereinabove stated and the account showed the moneys collected and disbursed by the Indenture Trustee, including the fees which it and its predecessors in trust had retained for management of the property and the fees paid to its attorneys for services in connection with matters other than the foreclosure proceedings, as heretofore related. The report, of course, made no mention of the unpaid fees which had been allowed to the Indenture Trustee by the decree of the state court in reimbursement for its services and those of its counsel rendered in the foreclosure proceedings. On June 23, 1937 the Indenture Trustee had

filed a claim and later an amendment to the claim to recover those fees.

September 9, 1937 the Court Trustee filed his answer, and objections to the claim and to the account and his counterclaim to surcharge the account (R. 127). City National Bank and Trust Company answered the counterclaim (R. 165).

Petitioner's pleading, though filed as one document, is actually in three independent and distinct parts, separately headed as (1) objections to the claim of City National, (2) counterclaim against City National and (3) objections to the account of City National.

September 14, 1937, the committee filed its petition for allowance of a reasonable amount to reimburse City National Bank and Trust Company for the use of personnel and facilities furnished to the Committee and for its services as depositary, as well as certain out-of-pocket expenses. The Committee requested no allowance for the service of its members (R. 156). At the same time, Defrees, Buckingham, Jones & Hoffman filed their petition for administrative allowances as counsel for the Committee (R. 151).

No objections were filed to the latter two petitions.

By order of September 14, 1937, the hearing on the report and account of the City National, and upon the objections thereto and counterclaim filed by the Court Trustee, was set for September 21, 1937 before the Court. The District Court, at that time, treated the claim of the Indenture Trustee as one for administrative allowances to be heard later with all the petitions which had been filed for fees and expenses (R. 863).

The hearing of the accounting proceedings was begun on September 21, 1937. It did not include the issues on the claim of the City National and the objections of the Court Trustee thereto. When the trial was concluded on October 12, 1937, an order was entered taking the report and

account, the objections thereto and the counterclaim under advisement—findings of fact, conclusions of law and briefs to be submitted. (R. 864).

Thereafter, on October 14, 1937, the claim of City National, the Court Trustee's objections thereto, and the fee petitions came on for hearing and there was an Order of Reference to a Special Master who was directed to receive and to report to the Court any evidence adduced in relation thereto.

The objections of the Court Trustee to the claim of City National were (1) that the decree allowances for its services and those of its counsel were not binding on the Federal Court; (2) that the decree was void *first* because City National and its counsel had sought *in the foreclosure proceedings* to represent conflicting interests and to act in opposite capacities; and *second* because the decree didn't run against the debtor Granada Apartments Inc., and that Granada Hotel Corporation, against which it did run, had been dissolved more than two years preceding the suit; and also (3) that City National was a trustee *de son tort* and thus neither it nor its counsel were entitled to fees, and (4) that the services or acts of City National were of no value to debtor's estate and had postponed proceedings in the Federal Court (R. 127, 128).

Pursuant to the reference evidence was adduced before the Master in support of the petitions of the Committee and its counsel and in support of the claim of City National and was returned to the court with the Master's report on October 21, 1937.

On that date, on motion of the Court Trustee, an order was entered that all of the evidence adduced by respondents before the Special Master on respondent's claim and petitions for allowances be consolidated with the accounting proceedings then under advisement, as above noted, and be considered as part of the hearing which had been

had and concluded in open court, and that they have disposition as part of said accounting proceedings (R. 712).

July 14, 1938 the trial court rendered its opinion (R. 761) and directed the Court Trustee to prepare and to present findings of fact "consistent" with what the court had stated in its opinion.

September 24, 1938 the Court Trustee presented his findings of fact to the court. Respondents filed their objections in writing September 30, 1938 (R. 722).

On May 2, 1939 the decree and the findings of fact, substantially in the same form as had been presented by the Court Trustee, were entered.

In effect the decree so entered denied the claim of City National Bank and Trust Company of Chicago on account of its fees, costs and expenses and those of its counsel incurred in the state court foreclosure; disallowed and dismissed for want of equity the petitions and claims for expenses and allowances of the Committee and the attorneys; refused to approve the report and account of the Indenture Trustee, but also refused to surcharge it; and sustained the counterclaim of the Court Trustee to the extent necessary to extinguish any and all the claims of the Indenture Trustee, the Committee and counsel (R. 794).

Proceedings in the Circuit Court of Appeals.

Respondents appealed from the decree and from all materially adverse findings (See Assignment of Errors (R. 817)).

Petitioner, at page 10 of his brief, says that respondents "argued only part of the findings mentioned by the assignment of errors." If by this he means that we failed to argue any finding or part of finding to which we assigned error, his statement is untrue and unsupported in any way except by reference to his Appendix "D". But Appendix

"D" relates only to findings or parts of findings to whic
no error was assigned.

To support our contention that the findings complaine
of were clearly erroneous we discussed the evidence, wher
any existed, and gave appropriate record references.

It is true, as stated at page 10 of the petitioner's brie
that he urged upon the Court of Appeals that the plead
ings and the *findings from the District Court* showed suc
breaches of trust as to compel the disallowance of fee
but the petitioner, as stated in the opinion of that cour
did not attempt to point out *any evidence* to support thos
findings but merely reiterated the findings themselves.

Not only that, but, as we shall show in the argument, th
breaches of trust which he urged, both in the Distric
Court and in the Circuit Court of Appeals, are quite differ
ent than those which he now claims in this Court.

The motions to dismiss appeals 6986 and 7060 made b
petitioner in the United States Circuit Court of Appeal
are discussed under our Point IV.

POINTS AND AUTHORITIES.

I.

RESPONDENTS FAITHFULLY DISCHARGED THEIR DUTIES AS FIDUCIARIES AND PERFORMED BENEFICIAL SERVICES FOR WHICH THEY ARE ENTITLED TO BE COMPENSATED.

(a) *Petitioner should not be heard upon points not raised below.*

Magruder v. *Drury*, 235 U. S. 106.

J. M. Robinson & Co. v. *Belt*, 187 U. S. 41, 23 S. Ct. 16.

(b) *The fact that the Committee was formed at the instance of the bank, and serviced by its reorganization division and that two of the members had been connected with Cody Trust Company, and two others were officers of the bank, did not deprive the Committee or the bank of the right to the allowances requested.*

Cromwell v. *Curtis*, 99 F. (2) 810 (C. C. A. 2).

In re Milwaukee Lodge No. 46, B. P. O. E., 83 F. (2) 662 (C. C. A. 7).

In re Paramount Publix Corporations, 83 F. (2) 406.

(c) *The sale by City National Bank and Trust Company as Trustee of the Granada Hotel of heat, water, and refrigeration to itself as Trustee of the Arlington Hotel at a price fair to both trusts did not constitute a breach of trust.*

French v. *Hall*, 84 N. E. 438 (Mass.).

Springfield Safe Deposit & T. Co. v. *First Unitarian Soc.*, 200 N. E. 541 (Mass.).

Lima First American Co. v. *Graham*, 6 N. E. (2d) 33, 38 (Ohio).

Roberts v. *Michigan Trust Company*, 262 N. W. 744 (Mich.).

In re Kramer's Estate, 15 N. Y. S. (2d) 700, 707.

Restatement of the Law of Trusts, Art. 170 Q.

Scott on Trusts, Vol. 2, Art. 170.16.

Bogert on Trusts, Vol. 3, p. 1724.

(d) *The City National Bank and Trust Company as Trustee, the Committee and their counsel performed beneficial services for which they are entitled to be compensated.*

(e) *Neither the failure to obtain a chattel mortgage on the furniture nor the subsequent Pick litigation support petitioner's contention that respondents should be denied fees and expenses.*

(f) *Since the complaint made by the petition for certiorari goes to the action of the Court of Appeals in making any allowances and not to its right to increase allowances, the latter question is not presented.*

Dickinson Industrial Site v. *Cowan*, 309 U. S. 382, 60 S. Ct. 595.

Connecticut Ry. & Lighting Co. v. *Palmer*, 305 U. S. 493, 59 S. Ct. 316.

General Talking Pictures Corp. v. *Western Electric Co.*, 304 U. S. 175, 58 S. Ct. 849.

II.

THE UNITED STATES CIRCUIT COURT OF APPEALS DID NOT REVERSE ANY OF THE FINDINGS OF THE TRIAL COURT WHICH WERE NOT CONTESTED.

See Appendix "A".

III.

THE UNITED STATES CIRCUIT COURT OF APPEALS CAREFULLY ANALYZED THE EVIDENCE AND PROPERLY APPLIED RULE 52 OF THE RULES OF CIVIL PROCEDURE.

Morley Const. Co. v. *Maryland Casualty Co.*, 57 S. Ct. 325, 328.

Star Farm Mut. Automobile Ins. Co. v. *Bonacci*, 111 Fed. (2d) 412 (C. C. A. 8).

American Central Ins. Co. v. *Harmon Knitting Mills*, 39 Fed. (2d) 21 (C. C. A. 7).

In re Prima Co., 98 Fed. (2d) 952 (C. C. A. 7).

Guilford Const. Co. v. *Biggs*, 102 Fed. (2d) 46, 47 (C. C. A. 4).

IV.

THE UNITED STATES CIRCUIT COURT OF APPEALS DID NOT ERR IN DENYING THE COURT TRUSTEE'S MOTION TO DISMISS APPEALS 7060 AND 6986.

V.

THE UNITED STATES CIRCUIT COURT OF APPEALS DID NOT RULE THAT THE DISTRICT COURT WAS WITHOUT POWER TO REVIEW, READJUST AND DISALLOW FEES ALLOWED BY DECREE OF THE STATE COURT.

ARGUMENT.

I.

RESPONDENTS FAITHFULLY DISCHARGED THEIR DUTIES AS FIDUCIARIES AND PERFORMED BENEFICIAL SERVICES FOR WHICH THEY ARE ENTITLED TO BE COMPENSATED.

(a) *Petitioner should not be heard upon points not raised below.*

As we have shown in the Statement of Facts, the alleged breaches of trust of the Trustee, the Committee, and their attorneys now relied upon by petitioner to deny respondents' compensation were not raised by the Court Trustee's written answer and objections to the claim of City National for fees for itself and counsel, nor by any other pleading filed by the Court Trustee.

Furthermore, with the exception of the testimony of Mr. O'Brien which was taken before the Master, the evidence and testimony on which the petitioner now relies to defeat respondents' right to fees was not taken before the Master to whom applications for allowances were referred but was adduced before the judge at the hearings on the Trustee's counterclaim and his objections to the report and account of the Indenture Trustee where the question of fee allowances was not in issue.

Moreover, the District Judge clearly indicated in his considered opinion delivered from the bench that he was not disallowing fees to respondents for reasons now mainly relied on by petitioner and that he did not understand petitioner's contentions as to why fees should be disallowed to be those now advanced. (R. 761.) Furthermore, that opinion clearly shows that the Judge did not in fact wholly believe those parts of the findings which the Court Trustee

now advances as the main support of his contentions* although the Court entered them in the form in which they were presented.

Nor were the contentions now made here, urged or argued by the petitioner in his brief in the United States Circuit Court of Appeals. It is true that petitioner in that brief made claim of conspiracy hereinafter discussed under our Point II, but he did so to support his contention made in the District Court that the account of City National Bank and Trust Company should be surcharged and never claimed either in his pleadings below (R. 127) or in his brief in the Court of Appeals that compensation to respondents should be denied on that ground. The fact is that petitioner, in his brief in the Court of Appeals argued that the order appointing City National Bank as Successor Trustee was invalid, that it was thus a trustee *de son tort* and as such entitled to no compensation in any event; that even if it had been validly appointed Successor Trustee, nevertheless it was not to be allowed any compensation because it had been guilty of acts of mismanagement in the operation of the physical property during the period of its trusteeship, and, to the extent that its predecessor in trust Central Republic Trust Company was guilty of the same acts of mismanagement, and City National Bank and Trust Company had failed to compel it to account therefor, but had per-

* Briefly, the Court's conclusions were: that the Committee was organized to bring business into the City National Bank and Trust Company; that the real concern of the bank and the Committee was to stay in possession to collect management fees as long as possible and not with getting the property out of court; the bank as Trustee in possession had mismanaged in that (1) it made no effort to convert excess public space to commercial use, so as to produce additional revenues; (2) as Trustee in possession of both the Granada and the Arlington it had the burden to show that the amount charged for heat, refrigeration, and water was warranted, but that it had not met that burden; and (3) that moneys ostensibly paid to Pick for equipment were in fact paid to procure a release of obligations of third persons on the suggestion of damages in injunction proceedings in the United States District Court—obligations for which neither the bondholders nor the debtor were liable.

For these reasons and none other the court held that there would be no allowances to respondents and directed the Court Trustee to prepare and to present findings "consistent" with what it had stated.

mitted its accounting to be approved, City National Bank and Trust Company was liable to surcharge for the items which otherwise would have been payable by its predecessor in trust. These were the only reasons advanced in the Court of Appeals why the fees of respondents should be denied.*

Since these were all of the reasons advanced by petitioner in the lower courts there is, of course, no justification for the representation which he makes in his petition for certiorari and at page 11 of his brief, to the effect that the additional grounds which he there raises for disallowance of fees were raised in the Circuit Court of Appeals, and that it failed to express any moral or legal concern in regard thereto.

We shall, of course, meet petitioner's present contentions on the merits. Account must be taken, however, of the fact that the evidence adduced both by petitioner and respondents, referred to and quoted by petitioner, was not adduced with the present contentions in mind. As a result, some of the testimony, material to the points now raised, was given only incidentally and is incomplete, ambiguous and uncertain as to time and place when considered in relation to the contentions now made. At times this is so to a degree, which would make it appear that respondents had failed to make the facts known fully and accurately, which they would have been expected to do if the points were then involved.

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* Petitioner under Point VIII of his brief in the Court of Appeals argued that the District Court had properly denied all compensation and said at p. 66:

"It is plainly evident that (1) the failure to pay taxes, (2) the misappropriation and wrongful payments of rents, (3) allowing liens superior to the mortgage to accrue, (4) the charging against the estate of unearned fees, (5) the waste and neglect of the incinerator, (6) the wrongful and unjustified payment of legal fees and court costs, (7) the failure to collect moneys in the form of rents and *service fees due the estate*, all constituted waste to the extent that these acts wasted or depleted the estate. Each and all made the redemption more costly, the payment of the bonded indebtedness more impossible and generally 'lessened the value of the inheritance.' Certainly all of these acts were as injurious to the estate as the most systematic scuttling of the physical assets would be."

(b) *The fact that the committee was formed at the instance of the bank and serviced by its reorganization division, and that two of the members had been connected with Cody Trust Company and two others were officers of the bank would not deprive the committee or the bank of the right to the allowances requested.*

The Trustee makes a great point of the fact that the City National Bank took the initiative in the formation of the committee and that it was composed of bank officers and representatives of the Cody Trust Company. He implies that the disclosure of this fact alone is enough in itself to deprive the Trustee and its attorneys of all fees.

In our statement of facts, we showed that the committee was sponsored and formed by the Trustee and that the bank furnished the committee with personnel and facilities incident to the conduct of its business.

During 1933 in Illinois, as elsewhere, there was no market for the sale of properties for cash. 77B had not been enacted. Foreclosure and sale was the only remedy available. While the Trustee had the exclusive right of action on behalf of the bondholders in proceedings for foreclosure, it was without right or power under the terms of the Granada Indenture to bid in for the bondholders. The law of Illinois provides for a period of fifteen months during which redemption may be made from any foreclosure sale. Accordingly, if the property was to be brought to sale and sold without sacrifice, it was necessary that there be a committee able to formulate and adopt a plan of reorganization under which the property might be acquired at the foreclosure sale.

As we have noted, City National Bank and Trust Company had taken over the deposit liabilities of Central Republic Trust Company. The record does not show it but it may be assumed that many of the people who purchased

these bonds were depositors of the bank. The question was what to do. The bondholders were scattered and their holdings small in amount. They never would have formed a committee on their own initiative. Furthermore, it was at best doubtful if any satisfactory arrangement could have been made outside the bank for the financing of any committee. Should the bank have refused to have anything to do with it and leave the unorganized investors without any protection? Should it not have organized a committee to protect their interests at any sale, and should it not in the interim have seen that the income was in some way sequestered for their benefit? There, of course, was only one decision. In short, the best and most practicable method available was adopted. And it is true, as petitioner claims, that from the time of the organization of the committee, its most active members were Mr. Sturm and Mr. Tuttle, who had had nothing to do with the underwriting, and that the secretarial service was furnished by the bank where all of the details were handled.

We submit that there was, therefore, nothing inherently wrong in the method that was pursued and that the bank is not to be deprived of its right to be reimbursed for the use of its facilities and personnel merely because of its relationship to the committee.

(c) *The sale by City National Bank and Trust Company, as Trustee of the Granada Hotel, of heat, water, and refrigeration to itself as Trustee of the Arlington Hotel at a price fair to both trusts did not constitute a breach of trust.*

Petitioner at many places in his brief and particularly at pages 33 and 44 makes the point that if the Granada, Arlington, and Lincoln Park Manor properties were not to be operated as a single unit or reorganized as a group, it was highly improper for City National Bank and Trust

Company, the Committees, or counsel to continue to represent more than one of them.

But, as we have shown, the three properties had ceased to be owned or controlled by the same persons some time prior to the formation of the Granada Committee and the appointment of City National Bank and Trust Company as Trustee. The first mortgage bond issues were held by different groups of bondholders and were secured by separate trust deeds. The owners of the Arlington and Lincoln Park Manor were free to discontinue taking service at any time. The properties were therefore not being operated as a single unit as petitioner assumes. Nor was there anything in committee representation or reorganization to alter or change these rights.

Accordingly there was no duty to reorganize the three properties as a group.

Furthermore we have heretofore shown that the committees, the Trustee and their attorneys made every effort to effect a group reorganization but that it was impossible to do so.

He also charges that City National Bank and Trust Company in December of 1933 reduced the charge made by the Granada for heat, water, and refrigeration furnished to the Arlington from $900 a month to $600 a month and that in so doing it bargained with itself.

We have shown in the Statement of the Case the circumstances under which the rate of $600 a month was established, and we have shown that at that time City National Bank and Trust Company was not Trustee in possession of either property but that it did participate in the discussions and did assure itself that the amount charged was fair. Shortly thereafter an agreement was executed by the two owner corporations to give effect to the arrangement so made. Had the Bank at that time been in possession of

the properties, it would have been unnecessary to consult the officers of the corporation.

The arrangement so made was continued in effect down to January of 1935, when City National Bank and Trust Company of Chicago became Trustee in possession of both properties. It continued to charge at the rate of $600 a month. It owned none of the indebtedness of the corporations which owned those two hotels. It had no personal interest of any kind. The bonds were held by the public (R. 67, 181, 513).

The authorities which we have cited under this point sustain the proposition that the action of the Bank did not constitute a breach of trust under these circumstances, if the price fixed was fair.

The cases cited by petitioner to the contrary, namely, *Metcalf v. Metcalf,* 286 Ill. App. 10, *Lerk* v. *McCabe,* 349 Ill. 348, and *Chicago Title and Trust Co.* v. *Schwartz,* 339 Ill. 184, are all agency cases and are not applicable.

It is true that the law forbids an agent to represent both buyer and seller without disclosure and that the agent in such a transaction is not entitled to any fees or compensation, and that the transaction is voidable.

All of the cases cited by petitioner in Note 21, at page 25 of his brief, are cases that support this proposition.

However, it is permissible for a trustee in one trust to sell to itself as trustee in another trust, provided the price is fair. Such a transaction is not voidable and is not a ground for denial of fees to the trustee.

That these two principles are not inconsistent is illustrated by the fact that the Restatement of the Law, which is intended to be a co-related statement of the law on all subjects, states the law in reference to an agent representing both buyer and seller and a trustee of one trust selling to himself as trustee of another trust to be as above

stated. See Law of Agency, Art. 313(2); Law of Trusts, Art. 170-Q.

Likewise, in Footnote 13, at page 24 of petitioner's brief, he cites *Bogert* on "The Law of Trusts and Trustees" to sustain his proposition. But it is interesting to note that in Volume 3, at page 1724, Mr. Bogert states "A sale by T, as Trustee of the A estate, to T, as Trustee of the B estate, has been sanctioned where made in good faith."

Indeed the trial court took this view of the law when it said that under those circumstances the burden was on the Trustee to show that the amount charged was reasonable (R. 767).

Now as to the reasonableness of the rate—the Arlington stood fully equipped with refrigerator boxes and all necessary pipe lines and with its own radiators and steam pipe, and hot and cold water lines. The witness Brooks, an engineer called by the City National, rendered a written report (R. 504), which showed that the Arlington could have put in its own heating system, water supply system, and brine refrigerating system, and furnished its own service for about $5,500 a year, including fixed charges of 15% annually made up of interest on the investment, depreciation, insurance and taxes.

Or, if the Arlington were to install its own heating plant and its own individual electric refrigerators (which it did do), it could have furnished its own heat, hot water and refrigeration for $7,041.51 a year—and have much more attractive and efficient refrigerating units. That figure is made up in this way: The Court Trustee's own witness, Schott, one of the engineers who made a survey of the property, said that a reasonable charge to be made by the Granada for all services, *including a 20% profit*, would be $812.59 per month or $9,751.08 a year (R. 322). He then said that if the Arlington should discontinue the refrigeration service it would be entitled to a credit of $333.18 per month or $3,998.29 per year (R. 286). This would leave

$5,752.79 as the annual charge on the basis of his own figures for heat, hot and cold water. Schott's own testimony is that 76 General Electric individual 3 to 4 feet boxes could be purchased by the Arlington for $7,600. The witness Mackie, a research analyst and expert on operating costs of individual electric units, testified that the cost of electric current is 50¢ per box per month and the maintenance charge is $1.22 per box per year (R. 397). His testimony is undisputed.

So taking the investment at $7,600 and allowing 15%, or $1,140 per year, to include interest, depreciation, insurance and taxes, and adding the operating charge of 50¢ per box per month, or $456 per year, and the maintenance charge of $1.22 per unit or $92.76 per year, gives annual operating and fixed charges of $1,288.72, which, added to Schott's suggested charge of $5,752.79 for heat and hot and cold water, gives a total of $7,041.51 a year—an amount well within the $7,200 that the Arlington was actually paying.

The point of the matter is, that in no sense would it have been reasonable or just to require the Arlington to pay more than what it would have cost it to furnish its own heat, refrigeration, hot and cold water.

And again City National retained an outside engineer, the witness Dauber, who rendered a detailed report and survey which showed the total cost to the Granada for servicing the Arlington with heat, refrigeration, hot and cold water, to be $6,933.96, including all operating and fixed charges. Adding 10% for profit gives a charge of $635.30 per month (R. 627-631).

We thus have two engineers starting at the same operating cost, one recommending a charge of $812 a month and the other $635 a month a difference of $2,125 a year, and here is how it happened.

1. Schott charged $416.80 a year too much profit, even on the basis of 20%, for his report shows that he took the

operating charges, added in 15% for the fixed charges, and computed 20% profit on the whole thing instead of taking 20% profit on the operating charges.

2. His report shows (R. 532) that he figured 5.7% on $44,410, the original investment, for "maintenance and supplies." There is no basis for this charge since the actual maintenance and supply figures were already taken into consideration in his detailed statement. This error makes for a difference of $836 per year on the Arlington alone.

3. There is a difference of $192 per year on account of excess depreciation of 1.3% based on the investment of $44,410. That is to say, Schott takes 4.3% a year for depreciation, writing off the plant in 15 years. He said this was "customary" but admitted that the life of the plant was at least 22 years. On a 22 year life the proper depreciation would be 3% a year, as taken by Dauber.

4. There is an item of $613 a year in favor of the Arlington on account of 10% excess profit. Schott figured a 20% profit, Dauber 10%. Dauber said 10% was fair, and Schott's opinion differed, although Schott had to justify the 20% on what he called "the hazard of maintaining service," which hazard lay "in the necessity that the Granada take care of its central plant,"—which it seems quite plain it would have had to do whether it was servicing its own property alone or its own property and others.

These four items alone total $2,057.80. Adjusting Schott's figures on account of these errors leaves a difference in the two reports of $100 per year more on Schott's than on Dauber's.

Both engineers made a common error. They each depreciated the plant at so much per year without inquiring to see at what rate it had been depreciated in the past, and they admitted this.

The fact is that from 1929 down to January of 1934 the

Granada had been making a charge sufficient to include operating costs, 15% for interest and amortization, taxes and insurance, and an additional 20% for profit (R. 649, 652, 653, 655). The result was that the Granada had long since written off its original investment, after which no further depreciation is allowable (R. 448).

The Granada's own books show the total operating charges to be $19,633 for the three properties (R. 656). Deduct 50% for the Granada's share, balance equals

Operating cost of Arlington and Manor	$ 9,333.00
Add 10% operating profit	933.00
Add half of interest at 5% on $44,400 investment (the share of the Arlington and Manor)	1,100.00
Add the Arlington and Manor's share of amortization at 3% on the original investment	660.00
Total fair charge to Arlington and Manor	$12,026.00

But against this the Granada actually received $13,810.02 from the Arlington and Manor (R. 655).

Put in another way, it cost the Granada for total operating expenses on the three properties, before fixed charges and profit $19,633.45

Add interest at 5% on its investment of $44,400	$ 2,200.00
Add depreciation at 3% on 22 year life	1,320.00
Total of fixed and operating charges before profit	$23,153.45
Deduct amount received from Arlington and Manor	13,810.02
Leaves a balance of	$ 9,343.43

representing the cost to the Granada not only of its own heat, refrigeration, hot and cold water, *but also for its own house lighting.* On the basis of Schott's report the Granada heat, refrigeration, hot and cold water for its own

use should cost $15,940.93 (R. 533). Deduct the actual cost of $9,343.43 leaves a profit of $6,597.50.

We submit that these figures conclusively show not only that the Granada was getting an exceedingly fair charge from the Arlington but was operated at a very handsome profit, realized to a great extent on an antiquated brine refrigeration system.

We further submit, on the basis of the record, that it cannot be said that the Trustee failed to give meticulously close consideration, study, and attention to the problem as to what a fair charge should be, and when it charged, as City National did from January 4, 1935, the sum of $600 per month, the above figures show that the results of its study were exceedingly accurate.

(d) *City National Bank and Trust Company, as Trustee, the Committee, and their counsel performed beneficial services for which they are entitled to be compensated.*

The petitioner at pages 25 to 56 of his brief seeks to establish the failure of the Committee, the Trustee, and their counsel to perform their duties as fiduciary. In an effort to accomplish this he refers to or quotes testimony of Bank witnesses, most of whom were called by him and cross-examined by permission of the trial court (R. 172). The meaning of the witness is misrepresented in instance after instance by extracting some short sentence of the testimony from its context and assigning some meaning thereto not warranted by the context, and sometimes by coupling statements extracted from different parts of the record and actually having no relation to each other. It seems impossible to meet such a situation without burdening the court with extended reference to and quotation from the testimony of the witnesses. This we have hesitated to do. However, we deem the misrepresentations of such a serious character and their bearing on the issues involved of

enough importance to warrant our imposing on the court a tedious task which it should not have had to undertake.

On page 26, in reference to Mr. Sturm's testimony, are the following representations:

1. Petitioner says that Sturm admitted that "his status was difficult to explain" and said that the Committee "did not concern itself very much with the operation of the Granada."

Sturm actually said he had nothing to do with renting, repairs or physical condition of the hotel or its operation; that his duties with City National with reference to the property are perhaps a little difficult to explain. They had to do with the bond issue, the defaults, finding a fair means of reorganizing (R. 202). The committees are always interested in knowing something about the operation of the property, although it does not concern itself very much with the operation. They want to know that someone is in there operating and that the property is being used for proper purposes (R. 203).

2. That "the Committee co-operated with the Trustee" in taking the bondholders' money to pay for the *Tuttle* v. *Harris* litigation.

Sturm said that the Committee and the Trustee co-operated in *carrying on the litigation* because it did not feel that it could wind up with a valid merchantable title; that it was proper to take the bondholders' money to pay for this litigation (R. 206).

3. That "the Bank furnished the Committee" and then "became the depositary", and "if there are any fees allowed the Committee they go to the Bank."

Sturm at this point was not talking about the Granada Committee. He was talking about the Bank committees generally, and he said that the Bank furnished the committee (meaning the officers who were to serve on the committee) and that it furnished the personnel and facilities to

make it carry on (R. 210). He also said the members of the Granada Committee individually do not ask nor do they receive any fees, directly or indirectly, and that the cost does not include anything for the members of the Committee individually (R. 469).

4. That after City National formed the Committee, the Committee then filed a petition in the state court to have City National appointed as Trustee.

The statement is literally true, but the Committee was organized in April of 1933 and City National was not appointed Trustee until January of 1935.

5. That the Committee did not object to lawyers' fees.

Sturm said that the Trustee's fees, Master's fees, and counsel fees had all been considered by the Committee, not separately in the Granada case, and that the fees recommended by the Bar Association are fair and are allowed by the courts, and that he did not make any objection about such allowance in the state court (R. 220).

And continuing on page 27, the petitioner represents:

6. That Sturm did not know the value of the property nor the tax situation from year to year.

Sturm said (R. 220) perhaps it is worth $200,000 or $250,000, and as to the taxes that he had not checked whether the taxes are any better now than they were last year.

7. *That Sturm knew the prospectus issued by Cody Trust Company told the bondholders the furniture at the Granada was paid for, but he made no effort to have Cody Trust or its officers pay for it.*

On being shown the prospectus, Sturm said he had nothing to do with this circular but he may have seen a copy of it. Instead of looking at the prospectus I preferred to have our people gather information concerning the property. I was interested in getting the information first hand.

As to his further statements contained at R. 225, for accuracy we refer to the unprinted transcript, page 600, which follows:

> Q. If that circular describes not only the physical property, the real estate, but also describes all the personal property in it and gives its value as $80,000, don't you think the bondholders bought the personal property?
>
> A. That is what they thought they purchased.
>
> Q. Then you do not know that they bought the personal property when they bought the bonds?
>
> A. I know it was represented in this, but I do not know whether they bought it or not.
>
> Q. Well, if they read in there so much personal property and so many beds and the place was well furnished and the personal property is worth $80,000, don't you think they bought it?
>
> A. Well, if they didn't have something to secure that, I don't think—maybe that is what was represented, but they did not get it.

8. That the Committee borrowed the money on a receiver's certificate to buy the furniture and didn't know if the furniture had been paid for twice. Unprinted transcript, page 601 shows:

> Q. Well, he was paying for it the second time, is that true?
>
> A. I don't know about paying for it. We are paying for it for the first time as far as I am concerned.
>
> Q. Well, you were paying for it the first time, but the bondholders had already paid for it, or according to this circular—
>
> A. According to the circular.
>
> Q. Then it was paid for twice?
>
> A. You can draw your own conclusions. I don't know.

As to petitioner's representation that Sturm made no effort to have Cody Trust Company or its officers "pay for it"—meaning the furniture—Sturm did not say that. Sturm said that he did not make any effort to have Cody Trust Company or its officers pay for the *receiver's certificate,* because he did not think it was collectible (R. 225).

9. That when the committee made an important decision only two or three members attended the Committee meeting. Sturm was talking about a specific matter, not general practice, and he said: "We usually have two or three sit in on a matter of this kind because we regard it of sufficient importance" (R. 230).

Concerning the witness, Charles S. Tuttle, whom he had called for cross-examination, petitioner says that he testified that he didn't know there had been a petition filed asking for expenses and fees for the Committee in this proceeding.

The question, as phrased, required that answer, for the Committee never requested fees.

At page 28 of his brief, petitioner, referring to Lewis Riddle, says that Mr. Sturm testified that Cody Trust Company, or some people associated with it, controlled the Granada Corporation stock in 1933.

Sturm said, in addition, it was then reported that the stock went over to Mr. Albers (the Receiver of Cody Trust Company) and then was acquired by a syndicate (R. 220, unprinted transcript 593).

10. That Sturm testified that Mr. Riddle and Mr. Hiram S. Cody were on the indemnity bond together and that funds were taken from the Granada Trust to pay their obligations.

Sturm said, on being shown Exhibit "M", an indemnity agreement, I cannot say whether I have seen this document or not.

At R. 221, Sturm, on being asked by the court if he knew that in paying out money on the receiver's certificate he was bailing out Wenstrand, said "We certainly did not figure that. I didn't know I was protecting him. I thought I was protecting the bondholders when I was doing that, protecting the operation of the property, making it possible

for this property to operate. I certainly had no interest at any time to favor Mr. Wenstrand or aid him in any way."

The Court: You did not know that Mr. Wenstrand was obligated to purchase that—buy that receiver's certificate, if it was not paid off?

The Witness: No, I didn't know that. I don't know that now, if it is a fact.

Sturm was referring to an alleged agreement of Riddle, Wenstrand and Cody to purchase the receiver's certificate from the surety company if it was not paid.

And as to the words "and that funds were taken from the Granada trust to pay off their obligations," Sturm is here referring to Exhibit M, which is the application for the indemnity bond and not an agreement to purchase the receiver's certificate. At unprinted transcript 607 he was asked:

Q. Did you think it was proper to take the funds of this trust and pay off the obligation of those people on that bond in this court?

The Witness: I have lost that.

Mr. Woods: Did you think it was proper, or not?

A. I said I thought it was proper in the light of the whole situation.

And (at R. 230) Sturm said, I don't know whether those gentlemen were released on this indemnity. I don't know just what kind of an order was entered at this moment. If the Indemnity Company was released, I suppose they fell with the release to the Indemnity Company.

11. Petitioner said that O'Brien testified that *"Lewis Riddle had given the Surety Company an Indemnity Agreement, and a receiver's certificate had been issued to pay that claim, and that his firm had been paid $2,000.00 for counsel fees for conducting the litigation."*

O'Brien said, R. 499, "I know *now* that Hiram Cody, Wenstrand and Riddle were indemnitors on the surety bond."

As to petitioner's statement that a receiver's certificate had been issued to pay "that claim," the claim referred to was that of Pick & Company and not a claim on an indemnity agreement, as petitioner implies. The litigation for which $2,000 was paid counsel was the fixture litigation in the state court.

12. And on page 29 petitioner refers to O'Brien's statement about the prospectus. We shall discuss this in relation to a similar statement at page 47.

13. Arnold Johnson testified that the bank's reorganization division made recommendations to the Committee.

Johnson said (R. 422):

> "The reorganization division has varied in size—each man would be assigned a number of loans. It would be his duty to make a careful examination of all the facts as to the property and the default, and he would follow through from a reorganization standpoint and put things in a concrete form and make recommendations as to plan of reorganization.

Petitioner says that by "we" the witness referred to the bondholders' committee and to the reorganization division of the bank.

Johnson said (R. 431):

> "I cannot say the number of meetings held after Kilmer's appointment because many subjects came up for discussion where we would not send out a formal committee meeting or record. We did not just sit around the bank when we felt like it and talk about it. By 'we' I refer to the bondholders committee and the reorganization division. When I say that we considered various things I include in 'we' the individual members of the Committee, myself and others in different departments."

14. Petitioner says Johnson testified that, "We had committees on about 375 of the 400 issues that we handled," that the Committee held only four formal meetings as shown by the Committee's minute book.

Johnson said that the Committee (on the Granada and not on 400 issues as petitioner implies) held only four formal meetings as shown by the minute book but that the Committee held other meetings at which matters were discussed but no formal decision was made (R. 436).

15. Petitioner says that Johnson testified that the officers of the Central Republic employed the attorneys now representing City National and that Committee had nothing to do with hiring its lawyers.

As we have shown in the statement of facts, Johnson was referring to the original retention of counsel in the Thuma-Granada fixture litigation and not to the later retention of counsel in 1933 by the committee.

Johnson also said (R. 437):

> "It was talked over with the Committee members. I don't see how you can draw the conclusion that for all practical purposes the Committee and the bank were one and the same because three of the members are not even with the bank and it is not true for all practical purposes that they are one and the same."

16. Commencing at page 35 of his brief petitioner makes the following representations in respect of the testimony of Mr. Hubbart:

That at the same time he as agent for the Bank was operating the Arlington and the Granada he collected from the Arlington for heat, water and refrigeration $600 a month, and objected when he found the Arlington paid as much as it did.

Hubbart said (R. 177) that during the period that he operated the Granada he collected from the Arlington $600 a month. He had to do with the Arlington since the end of December, 1933, and the Bank was Trustee of the Granada from January of 1935. An investigation was made and as a result a contract was signed reducing the service charge to $600 a month. He said that the amount

was excessive and that it was investigated and an accountant's figure was secured from experts, and that it was not the fact that pressure was put on to force it through.

17. That Hubbart stated that he did not make any effort to get any permanent tenant for the ball room space in the Granada (page 36, petitioner's brief).

This statement is lifted from hundreds of pages of testimony on the subject of lobby revision to increase revenues. The record shows that the zoning ordinances prohibited commercial use (R. 386); that extensive structural changes would have been necessary (R. 368, 381, 383), in short that it would be a costly and unsuccessful enterprise. See testimony of witness Kirkeby (R. 235), Brittain (R. 367), and McDonnell (R. 378).

18. As to the testimony of the witness Bickel, petitioner represents that at the time of the fixing of the service charge at $600 a month Central Republic was Trustee under both mortgages.

Bickel did say this, but added "although not in possession of both."

19. That Chicago Title and Trust Company was not operating the Granada when Central Republic Trust Company took possession as Trustee. They had stated that they would prefer to be at that time. We were operating it through Mr. Hall.

Mr. Bickel said (R. 417):

> "I remember the Title Company saying they wanted to operate the property direct but whether they had done so or not I don't remember. Mr. Hubbart would remember that."

20. At page 38 his brief, petitioner represents that McDonnell testified he would try to make some use of excess lobby space to bring in money.

The testimony, commencing at R. 380, shows that hotel

dining rooms are unprofitable; that it would be costly to convert the lobby space; that as a business location the property does not appeal, and that the manager told him there were restrictions as to street openings, etc.

22. At page 40, as to Hertzman, petitioner said he testified he had written a letter to City National urging a reduction in the amount of the payments made by the Arlington Hotel to the Granada and "I understand that as a result of this letter they made a charge-off in January of 1934 of $4,080."

Hertzman said (R. 304):

> "I was told why this report was desired by Mr. Bickel and Mr. Hubbart. They said they wished the calculation in reference to what the fair costs of heat, refrigeration, and hot and cold water should be and how the charges should be made."

23. At page 41 petitioner says the witness O'Brien testified: "We later appeared in court on the presentation by the receiver of the account of Central Republic Trust Company." He did not indicate whether he appeared as counsel for City National and the Committee or for Central Republic, who received a full and complete discharge and release from all liability.

Central Republic Trust Company which had gone into receivership during 1934 was represented by William L. O'Connell, Receiver, whose attorneys were Igoe & Flaherty, who appeared and tendered the account to the court for approval (R. 621). O'Brien appeared for the Successor Trustee, City National Bank and Trust Company, which was familiar with the account (R. 196). Later City National filed full account in these proceedings (R. 111).

24. O'Brien testified that for defeating the federal bankruptcy court's jurisdiction we were paid by City National Bank and Trust Company the sum of $3,500.

The testimony was that the litigation in *Thuma* v. *Gra-*

nada had been in the United States District Court, the Circuit Court of Appeals, and in the Supreme Court, and that "for the services thus necessarily rendered in the whole bankruptcy proceedings were paid by City National Bank and Trust Company the sum of $3,500, on April 13, 1936 * * *" (R. 483, 484.)

25. O'Brien, speaking of the foreclosure in the state court said there is no question but what he spent 6½ years, from June, 1930 to December, 1936.

Since the cross-complaint to foreclose was not filed until August of 1933 the statement is obviously incorrect. It is true that the Thuma fixture litigation was filed in June of 1930.

Page 43—Item (9) does not purport to be a finding of fact, although it was included in the findings which the Court Trustee prepared and had entered. Assignment of error has been made to every material finding on which that finding possibly could be based.

26. Petitioner says, yet the bondholders and its Committee and the new Trustee were there represented by the lawyers of the accounting fiduciary, who received its discharge.

As above noted, Igoe & Flaherty were counsel for Mr. O'Connell as Receiver of Central Republic Trust Company. Nor were respondent attorneys counsel for Central Republic Trust Company individually at any time. They were counsel for Central Republic Trust Company as Trustee under the Granada trust deed. The account was presented in 1935.

27. Petitioner says Chicago Trust Company with Cody Trust Company were the underwriters of the two Granada bond issues; it was the Chicago Trust Company, this firm's client, who had issued a fraudulent prospectus which stated that the Granada furniture was additional security for

the bondholders when, as a matter of fact and truth, the furniture was not owned by Granada but had been obtained on a chattel mortgage. Mr. O'Brien testified to this for he said "I think both the Chicago Trust Company and Cody Trust Company advertised in their circulars this furniture was part of the security sold to bondholders."

If, by the words "this firm's client" petitioner means to imply that attorney respondents had anything to do with the preparation or issuance of the circular we state that they did not and also they knew nothing about it, nor does the testimony show that Chicago Trust Company was its client in this transaction.

For accuracy we quote from the unprinted transcript (p. 1031):

"Q. You didn't prepare the trust deed, did you?
A. We prepared whatever forms of trust deed were in use by the Chicago Trust Company.
Q. You did?
A. Any printed forms we prepared, yes.
Q. Do you mean to say that they themselves drew up the trust agreement and filed it and asked you for an opinion?
A. Yes, they had their own title division which included lawyers dealing with recording papers and disbursing of loans.
(p. 1032)
Q. Do you know who attended to the release of the old trust deed in 1928?
A. No.
Q. Did you know the Cody Trust Company and others agreed to pay off the Pick claim at the time the new financing was done in 1928?
A. No.
(p. 1036)
Q. That was an agreement as between the Cody Trust Company and the Chicago Trust that the Cody Trust should carry out that obligation?
A. The agreement was that the Cody Trust was to see that the bondholders ended up with a good first mortgage on the property and they pledged $50,000 of Seconds to insure that.

Q. In other words, both the Chicago Trust and the Cody Trust advertised in their circulars this furniture was part of the security sold to the bondholders?

A. I think so, I think they did.

Q. And they agreed with Granada they would remove that lien out of the proceeds of the loan, to clear title, which they did not do?

A. No. They had no such agreement with Granada. The Granada had that condition in the loan agreement, they would do it.

Q. Well, if the Cody Trust,—just assuming what I say—if the Cody Trust Company agreed, the Cody Trust or the Chicago Trust agreed to clear the lien out of the proceeds of the loan, what justification is there anywhere along the line since then to take bondholders' money and use it to pay off that lien?

A. Well I do not say there was not an existing cause of action against perhaps the Cody Trust and the Chicago Trust Company. I put a period there."

From the question as presented it is easy to understand the answer "I do not say that there was not an existing cause of action"; for the question required that O'Brien assume facts to be as stated in the question. Similarly in the case of petitioner's statement that O'Brien knew that $120,000 worth of furniture that Granada was obligated to pay for had almost wholly disappeared and could not be found.

Reference to the unprinted transcript at page 1032 shows:

"Q. If I told you those financial records showed charges by Pick & Company against the Granada, the old company and the new company, amounting to $120,000 would you be surprised?

A. No.

Q. Now, in the handling of these matters relating to the furniture, did it ever occur to you that $120,000 worth of furniture must have been distributed among other places than the Granada itself?

A. Well, I never considered the question from that standpoint.

Q. You never considered whether some other hotel might have been charged with it?

A. The only furniture I ever had occasion to consider was the new furniture purchased for $35,000.

(p. 1033)

Q. You handled that transaction?

A. No, except on the assumption of the balance due on the conditional sales contract amounting to about $19,400.

(p. 1936)

Q. Did you know the Cody Trust Company and others agreed to pay off the Pick claim at the time the new financing was done in 1928?

A. No.

Q. You did not know that?

A. Not at that time."

These references to the unprinted transcript in question and answer form make it more plain that there is no justification for the conclusions urged by petitioner and they will support the argument hereinafter made under Point I (e).

As to O'Brien's admission that his firm spent seventy-eight months in the state court foreclosure proceeding and the petitioner's contention that the purpose of the delay was to allow the statute of limitations to run for the protection of "the former unfaithful Granada fiduciaries who were clients of his firm," we call attention to these facts:

(1) The proceedings filed in June of 1930 were not for the foreclosure of the first mortgage, but, until August of 1933, when a cross-bill was filed to foreclose the first mortgage, the proceedings related chiefly to the fixture litigation.

(2) In no way could the pendency of those proceedings have misled or lulled into inaction any bondholder who might have had a right of action for misrepresentation, if any. Patently, the proceedings would have just the opposite effect.

(3) Since the Illinois statute of limitations is five years and since the issue in question was made in September of

1928, there was not more than a month or two subsequent to the time of the filing of the cross-bill within which suit might have been brought on account of the circular misrepresentation, if any.' Surely, therefore, the delay from September of 1933 on could not have had the purpose indicated by petitioner.

Petitioner had included a provision in one of his findings submitted to the trial court that the purpose of the delay was to allow the statute of limitations to run. The trial court refused to so find (R. 732, 733), and the provision was eliminated.

Petitioner further states that Wenstrand and others were indemnitors on certain surety bonds and that O'Brien admitted it. He refers to R. 499, at which appears part of the testimony taken before the Special Master after the conclusion of the trial before the court.

O'Brien did not admit any such thing. His statement was:

> "I do not know that Cody Trust Company and others agreed to pay off the Pick claim at the time the new financing was done in 1928. I did not know that at any time. I know now that Hiram Cody, Wenstrand and Riddle were indemnitors on the surety bonds."

It is plain that the witness was speaking of knowledge which he had at the time he was testifying, gained from information obtained at the trial.

Petitioner says at page 48 of his brief that City National and its Bondholders' Committee paid off Wenstrand's debt out of the bondholders' money, and that no one asked Wenstrand to pay his own obligations.

We have already related Mr. Sturm's testimony showing that he did not know even at the time of trial that Wenstrand was obligated in any way to buy the Receiver's certificate if it was not paid (R. 221). Nor did he believe that he was discharging any obligation of Wenstrand (R. 228). Sturm further said that he was familiar with Wenstrand's

affairs in the sense that he believed him to be wholly unable to meet obligations (R. 229). This contention by Petitioner is the same as the one he argued in the District Court when he said that the equipment items were purchased from Pick for more than their value, the amount paid in excess of the value being used to procure a release of a suggestion of damages. We shall discuss that contention under our Point I (e).

The suggestion made by Petitioner at the bottom of page 49 of his brief that it would seem from O'Brien's testimony that his firm also represented the interests of the Cody Trust Company and Petitioner's further statement that there can be no doubt but that Defrees, Buckingham, Jones & Hoffman were the attorneys engaged to establish the invalidity of the Pick chattel mortgage are both covered to some extent in our statement of the case. When Petitioner goes on to suggest that this is so because of the hours of service which the attorney-respondents have charged to the Pick furniture litigation in the state court, it is difficult to believe that his suggestion is made in good faith. The representation made by Cody to Keith was that the Pick chattel was invalid. Now if its invalidity had been established Pick never would have been able to take out the loose furniture as it was permitted to do promptly upon intervention in the state court proceedings. The lawyers whom Cody had in mind had unsuccessfully contested it in the federal court. We did not contest the validity of the Pick chattel, although we were in no way barred from doing so by reason of the federal court decree, inasmuch as the Trustee was not a party to the federal court proceedings.

There being a complete lack of any record evidence to show that attorney-respondents ever represented Cody Trust Company, Petitioner has gone to unusual lengths to establish off the record that attorney-respondents did represent Cody Trust Company. For example at page 44 of his petition for the writ of certiorari he sets out a portion

of a letter which he wrote to the United States Circuit Court of Appeals in which he said:

> "Since this Granada case was argued there appears in the advance sheets, *People* v. *Cody Trust Company*, 301 Ill. App. 580, wherein said law firm, meaning Defrees, Buckingham, Jones & Hoffman, is reported as representing the Cody Trust Company."

Mere reference to the official report of that case will disclose that those attorneys whom Petitioner referred to in said letter appeared for State Mutual Life Assurance Company and for nobody else. Equally untrue is Petitioner's conclusion at the top of page 50 of his brief, "Thus we see that the law firm represented the party owning and controlling Granada's common stock", meaning Cody Trust Company, and then Petitioner makes a point of the fact that the memorandum fixing the charge for services to the Arlington at $600 a month was prepared by O'Brien as testified to by Hall in the District Court, and Petitioner says that O'Brien, although present, did not deny it. The fact is, although the narrative (R. 402) did not disclose it, that O'Brien, who was examining Hall on direct, asked Hall if it was not a fact that he, O'Brien, had prepared that document, and Hall said that O'Brien had done so at Hall's suggestion, he thought (Unprinted transcript, 870).

At page 51 of his brief at finding 3, it is stated, "The records show that the attorneys whom they (meaning City National Bank and Trust Company) now retain, Defrees, Buckingham, Jones & Hoffman, have been active in all these matters since 1924 and have had to do with most of these litigations." It is indeed strange that the trial court made no finding of knowledge by the attorney-respondents of the serious matters charged against them by the Petitioner, and surely the words "have been active in all these matters" are not to be taken as a finding of such knowledge, especially when it is considered that the court Trustee who prepared these findings and had ample time within which to make sure that they unequivocally

stated the points which he had in mind and in this connection it is equally true that City National Bank and Trust Company of Chicago, as Trustee, was without knowledge of these matters. That this is so is perhaps best proved by reference to paragraph 35 at page 25 of the petition for certiorari. There the Petitioner, notwithstanding his findings, is so hard put to find evidence of knowledge on the part of City National Bank and Trust Company that he argues to this court that the supposed knowledge of the attorneys gained from prior dealings is to be imputed to the bank on the principle that knowledge of the agent is knowledge of the principal.

And consider Finding 6 at page 52 in relation to the colloquy between counsel and the trial judge at R. 223.

As to Finding 8 at page 53, there was no need to assign error, for the portion there stated is merely a proposition of law. We did assign error to the main part of the Finding, which is the part relating to the facts (R. 827).

At the top of page 89 of his brief petitioner asks respondents to show by what authority City National Bank and Trust Companyof Chicago acted as depositary and by what authority it claims fees. We too have been unable to find in the printed transcript any agreement or court order substituting City National Bank for Central Republic Trust Company. We have noted, however, that Exhibit A to the Committee's petition for allowances (R. 164) indicates that the Committee disbursed $50 for legal services incident to procuring the resignation of Central Republic Trust Company as depositary and the appointment of City National Bank and Trust Company of Chicago as successor depositary.

Petitioner sets this out at page 20 of his petition for certiorari.

In Finding 2 at the top of page 55 there is the following statement:

"Chicago Trust Company and the Codys and their

> attorneys failed in their promises to the bondholders in 1924 and 1928 * * * to tie in the furniture and equipment of the Granada Hotel as part of the security."

All of the language of this Finding 2 is taken from Finding 37 (R. 782). Respondents assign error to entire Finding 37 (R. 823). The record references given by petitioner to support this statement against attorney respondents are 497 and 499. We have read and reread the record at those points and we see no evidence to sustain the statement, if by the words "Codys and their attorneys" is meant attorney respondents. The statement finds some support if the attorneys referred to are those mentioned at R. 499 (Goldberg and Goldberg), who were the lawyers who had advised Hiram Cody that they could establish the invalidity of the Pick chattel mortgage.

It is to be noted also with what pains the finding is stated, so as to give a double meaning. One way you read the statement is that the attorneys were counsel for both Cody Trust and Chicago Trust, but that isn't what is stated. It says "Chicago Trust and the Codys and their attorneys." But there aren't any Codys, only Hiram Cody and Cody Trust Company, a corporation. Surely, if the petitioner had meant Defrees, Buckingham, Jones & Hoffman, it would have been easy for him to have said so.

Finally, there are the supposed admissions of record by respondents' pleadings mentioned at Appendix E of petitioner's brief. Of those mentioned at page 103 we deny the statements as made at 1, 2, 3, 7, and 8. We admit the statements made at 4 and 6, and admit the statement at number 5, but only as to the tax certificate. Of those enumerated at page 104 we admit 1, 2, and 3, except that only two of the Committee members were in the employ of City National. We admit 5 and 7, and deny number 8. As to numbers 4 and 6, we can neither admit nor deny, for they must be read in relation to the context.

Is It a Fact That Respondents Were Interested in Keeping the Property in Court?

Petitioner has had much to say about years of litigation, and he claimed and the trial court found that the real concern of the Bank and Committee was to stay in possession to collect management fees and not with getting the property out of court. We believe that the Statement of the Facts which has been made adequately discloses the complexities and difficulties which the Committee encountered. As far as the Indenture Trustee was concerned, there was no point in bringing the proceedings on to a foreclosure sale unless and until the plan of reorganization was available.

It remains to be said that City National Bank and Trust Company had full responsibility for the management of the property during the period of its possession. Its compensation was 4% of the gross income. Its pay for two years of operation was $8,853.19, not much more than the fees of $7,500 paid to the Court Trustee for six months' operation (R. 962). From 1933 to 1937 it was maintaining a reorganization division. It was to be compensated for use of facilities and personnel at a fixed rate of about 2% of the amount of the issue (R. 469), and it did not increase from year to year while the case stayed in court. Had it been able to effect a reorganization it would have received its fees as Indenture Trustee and as depositary and reimbursement for the facilities and personnel furnished the Committee. The lawyers too would have been paid.

In this situation it is difficult to conceive how the Bank, motivated by any self-interest, would unnecessarily defer disposition of the case. There are many issues handled by the Bank committees—about 400—and of those, as of 1937, it had completed the reorganization of 275, with 80 more in process of completion. Indeed plans had been submitted on all but about 75 (R. 434). Not only that,

but the Bank was Indenture Trustee under many trust deeds securing issues of bonds underwritten or sold by Greenebaum Sons Investment Company. Those issues were secured by some of the largest properties in Chicago. The Bank refused to take possession of those properties and it never changed its policy. It was only in the case of the Central Trust Company of Illinois and Chicago Trust Company issues that it was willing, for reasons assigned in the Statement of Facts, to take the responsibility of possession (R. 432, 433).

We have shown that when the property came in to the federal court in the present proceedings a speedy reorganization was effected. It is true that at the time of the approval of the petitions the Bank considered that the reorganization was sufficiently doubtful so that it would be better to retain possession until a plan was confirmed. It had not objected to the approval of the petitions, however, and, when Judge Barnes said that he would vacate the orders of approval if the Bank maintained its position, possession was surrendered.

(e) *Neither the failure to obtain a chattel mortgage on the furniture nor the subsequent Pick litigation support petitioner's contention that respondent should be denied fees and expenses.*

It is the failure of respondents in their alleged duty to tie in the furniture as a part of the trust estate in accordance with the circular representation, and the subsequent Pick litigation—allegedly prosecuted to avoid liability on the circular—that constituted the "conspiracy" charged in petitioner's pleadings, found to exist by finding 26 (prepared by the court trustee), mentioned by the Circuit Court of Appeals in their opinion, disavowed by the petition for certiorari, and now urged again on the court in more or less veiled form (see Assignment of Errors (i), Petitioner's

brief page 14, and pages 27, 32, 47, 48 and 54). It is what petitioner once called "the heart of the whole case" before he ostensibly repudiated his contention.

Assuming that there was misrepresentation in the circular, it must be borne in mind that there was nothing in the *trust indenture* which purported to create any lien on the furniture or to make it any part of the trust estate. Nor does it appear that in the loan agreement the borrowing corporation undertook to give a first lien on the chattels (R. 505). The petitioner's implication that the new first trust deed required that the furniture be tied to the real estate by *a first lien chattel mortgage* is not borne out by the facts, as a mere inspection of the indenture will demonstrate (R. 505).

Equally untrue and absolutely unsupported by the record is petitioner's implication that provision was made for the payment of the Pick claim out of the proceeds of the refunding loan. Indeed, the record affirmatively shows that no provision was made in the loan account for the payment of the Pick items (R. 499).

So that if we assume that the circular amounted to a misrepresentation the remedy of the bondholders would have been an action not against the indenture trustee to compel it to obtain all of the trust estate which was to have been delivered to it—for it already had all the trust estate—but an action against the underwriters for misrepresentation.

Such an action is personal to the bondholder and would lie against Cody Trust Company or the Chicago Trust Company, according to which underwriter sold the bond. Among the conditions precedent to recovery would be that the purchaser show that the misrepresentations related to a material matter, that he saw the circular which contained it and relied upon it in purchasing his bond.

In 1931 Chicago Trust Company and Central Trust Com-

pany of Illinois consolidated under the state banking laws to form Central Republic Trust Company, which by operation of law became liable for all and any liabilities of Chicago Trust Company.

On November 20, 1934 by action of the Auditor of Public Accounts of the State of Illinois a receiver was appointed for Central Republic Trust Company which as far back as June of 1932 was heavily indebted to Reconstruction Finance Corporation *to which it had pledged all of its assets.*

Later the receiver resigned the trusteeship on behalf of Central Republic Trust Company and on January 3, 1935 City National Bank and Trust Company of Chicago, *an entirely separate and distinct corporation,* a national banking association, was appointed successor trustee by order of the state court.

This being so, what possible connection with, or responsibility for, the underwriting or the circular misrepresentation would the successor trustee have? We have heretofore discussed under Point I (d) what knowledge the City National Bank and Trust Company of Chicago, the committee and their attorneys had about the circular or its contents. But supposing that they had knowledge, no duty or liability would have been imposed upon the bank, the committee, or their attorneys.

Immediately upon the appointment of the City National Bank and Trust Company of Chicago it secured from the receiver of its predecessor in trust all of the trust estate consisting of the land, the building, and all furniture, furnishings and equipment therein on which at that time there *was* a chattel mortgage as additional security (R. 509). Later, when the account filed by the receiver on behalf of Central Republic Trust Company was approved by the court, City National Bank and Trust Company of Chicago, as successor Trustee, obtained all of the funds in the trust

amounting to $9,995.45 (R. 114). So that the successor Trustee fully performed all of its duties and obligations in this regard and it continued to do so until the property was turned over to the federal court.

Cody Trust Company went into receivership in December of 1933 (R. 479).

But it is suggested by the court trustee that on some undisclosed theory City National Bank and Trust Company in January of 1935 or thereafter should have proceeded against the "former fiduciaries", meaning thereby, we suppose, Cody Trust Company and Central Republic Trust Company.

By virtue of what power or right? Does petitioner mean that the successor Trustee under the trust deed, in the absence of an express power therein contained, acquires the right to sue the underwriters on account of misrepresentations made to the purchasers of the bonds? And if so what would be the nature of the action and for whose use and benefit? Would it be for the bondholders or for only those who saw the circular and relied upon it and just who were they? How much would the judgment be for, and again for whose use and benefit? What would be the likelihood of successfully prosecuting such an action to judgment, the Illinois statute of limitations, of which the court will take judicial notice, being five years commencing September of 1928, the date of the sale of the bonds? And again, what prospect of recovery on any judgment obtained to justify the expense of the proceeding?

Another theory advanced by petitioner in the court below and again advanced here to establish the liability of City National Bank and Trust Company in connection with the Pick litigation is that the Central Republic Trust Company practiced fraud upon the state court in inducing it to sanction the purchase by the receiver of the fixtures and equipment in Granada Hotel and owned by Pick with-

out making full disclosure of all of the facts and that City National Bank and Trust Company, as the successor Trustee, had the duty to cause Central Republic Trust Company to account for the moneys so spent by the receiver.

This contention of the petitioner is predicated on the theory that the $22,500 paid in the Pick settlement was not in fact paid for the furniture but that the real consideration for the payment was the dismissal of the pending action for damages on the surety bonds in the Wenstrand suit in the federal court. We have set forth the facts in relation to that transaction in detail in our Statement of the Case and there pointed out that the price to be paid for the furniture in cash was agreed on before the arrangement for raising the necessary funds by receiver's certificate was made.

In support of this theory the petitioner called to the stand the witness Lenz (R. 262), who testified that the value of the built-in kitchen cabinets and china cases and of the ozite and carpets torn out of the building and removed to the street would be $3,392.30 (R. 265). As the testimony shows, the witness Lenz was not qualified, and before visiting the premises had been instructed by the judge "to make a report of valuation of the property in question during the year 1933 for removal purpose, or in other words for a forced sale" to an outside buyer, rather than a valuation based on cost of replacement less depreciation (R. 267).

The respondents' witnesses, Young (R. 420, 640), and Murphy (R. 421, 640), were prepared to establish through an appraisal which the court did not admit in evidence that the value of the furniture was $18,000, based on cost of replacement less depreciation. The $22,500 was paid on account of the furniture, its rental value for about three years, and the release of a deficiency decree in the suit to foreclose the chattel mortgage.

We thus see that the two bases on which the petitioner predicated this theory, namely, first, that the furniture merely had a value of $3,392.30 and therefore most of the consideration must have been paid for something else, and, second, that a fiduciary is presumed to have acted in breach of his duty, are respectively unsupported and unsupportable.

Furthermore, this is the very transaction which was approved by the Circuit Court of Appeals for the Seventh Circuit in the case of *Indemnity Insurance Company of North America* v. *Granada Apartments, Inc.*, 104 Fed. (2d) 528 (certiorari denied 308 U. S. 557).

Among the fact findings to which we assigned error are 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 28, 29, 31, 36, 37, 44, 45, 47, 51, and 57, which appear at R. 769-790. The essential part of each and every one of those findings is negatived and nullified by the decision in that case.

(f) *Since the complaint made by the petition for certiorari goes to the action of the Court of Appeals in making any allowances and not to its right to increase allowances, the latter question is not presented.*

The opinion of the Circuit Court of Appeals in part said:

> "We have examined the claims submitted by the City National and the Committee on what is designated as out-of-pocket expenses and we see no reason why those claims should not be allowed in full. As to all other claims for compensation and fees for services rendered in connection with reorganization proceeding, the amounts mentioned by the Court are inadequate and the Court should determine and fix what is a reasonable and customary charge for services thus rendered." (R. 967.)

Neither petitioner's statements of the reasons relied on for the allowance of the writ, nor any other part of the petition for certiorari questions the right of the Circuit

Court of Appeals to increase fee allowances or the propriety of the directions which the Circuit Court of Appeals gave to the District Court in reference to the claims for compensation and expenses in this case.

If the Court be of the opinion that the District Court was in error in denying all compensation and expenses of respondents, it is suggested that the direction of the Circuit Court of Appeals in reference to the amount of the allowances should not be disturbed.

II.

THE UNITED STATES CIRCUIT COURT OF APPEALS DID NOT REVERSE ANY OF THE FINDINGS OF THE TRIAL COURT WHICH WERE NOT CONTESTED.

In petitioner's Point II, he urges that the Circuit Court of Appeals departed from due process of law and denied him his day in court by reversing findings of fact which were admitted by respondents, and by making new findings of fact on questions not raised in the Circuit Court of Appeals.

The findings and parts of findings to which error was not assigned are indicated in petitioner's Appendix "D", but in most instances the admitted portions of the findings are not quoted, so that it is impossible to ascertain what story is told thereby without setting them down in a connected narrative.

To assist the court in this regard and to lighten its burden, we have performed that task at Appendix "A" of this brief. Appendix "A" is not a verbatim copy of the findings and portions thereof in question. It does, however, contain everything that could conceivably have any bearing whatsoever on petitioner's contention, and those parts most unfavorable to respondents are set out in the exact verbiage used by petitioner in preparing the findings.

As a reading of Appendix "A" or of the admitted findings themselves will disclose, all of the facts therein found which could possibly have anything to do with the issues involved, are set forth by us in our statement of facts in the fore part of this brief.

We contended in the Circuit Court of Appeals, and contend here, that the admitted facts do not show any breaches of trust or failure in fiduciary duty which warrants disallowance of respondents' fees, and that the contested findings are clearly erroneous. In reversing the lower court, the Circuit Court of Appeals did not, as petitioner contends, reverse the admitted findings, but merely agreed with our contention.

At page 72 of his brief, petitioner says:

> "The Circuit Court of Appeals went so far as to quote one of these partially admitted findings in order to prove to itself that the trial court committed error."

Petitioner's reference is to that part of the opinion of the Circuit Court of Appeals at R. 966-967, where the court quoted part of finding 56—not in order to prove to itself that the trial court committed error as petitioner contends,—but in order to show that no definite determination was made by the lower court as to the amounts which respondents would be entitled to if they were to be allowed fees.

The charge at page 73 of petitioner's brief that the Circuit Court of Appeals proceeded without notice to write new findings of facts on questions not raised in that court presumably refers to the contention made in more detail at page 13 of his petition for certiorari, where he said:

> "One of the surprise issues used by the Court of Appeals was that of 'conspiracy.' The Opinion of the appeal court stated:
>
> > 'Thus, we conclude there is no justification for charging City National with these various items, with the exception of what we have said with reference to Item III. In reaching this conclusion,

> we are not unmindful of the rule which requires us to accept findings of the trial court supported by substantial evidence. Here, however, they are predicated upon a theory of the existence of a conspiracy to which appellants were parties. We are satisfied no such conspiracy was proven.'
>
> Obviously conspiracy could not be the substantive basis for a cause of action. Civil conspiracy at most is aggravation of damages. It is never a cause of action. *Dean* v. *Kirkland*, 301 Ill. App. 495, 504. More than this however, 'conspiracy' was not pleaded, argued or briefed by any party to the appeal below. It was not an issue in either court. But the Court of Appeals makes the lack of 'conspiracy,' a determining factor upon which a reversal of the trial court's findings is based. No notice or hearing was given this petitioner upon this surprise issue."

It would be interesting to have the Court Trustee explain why he represented in his petition for certiorari that this was a surprise issue neither pleaded, argued nor briefed and why he now makes that claim again in his present brief in view of Paragraph 26 of the findings,* which he himself prepared, and in view of his brief in this case in the Circuit Court of Appeals, where he stated, at page 3 thereof:

> "The Codys desired to defeat the Pick claim. Lawyers advised them it could be done. They set about to do it. They promised Chicago Trust Company that they would set aside $50,000 face value of the 1928 Granada Second mortgage issue as a safety fund, and would indemnify Chicago Trust Company. They persuaded Chicago Trust Company to sign the agreement (R. 536) for all this. That agreement reveals the heart of the present controversy. * * *
>
> These trust companies used endless devices, lawyer-made, in the attempt to defeat the Pick claim, to dress it up in new ways, to prevent the bondholders from

* "When we look at the whole evidence as equity looks at evidence we reach the same results. Respondents and I. I. C. N. A. with knowledge participated in a conspiracy, the effect of which was to use the bondholders' money a second time to purchase furniture and personal property for the Granada Hotel. The details of this conspiracy appear from beginning to end of the record."

discovery of the true situation, to use bondholders' money, current Granada income, to pay a second time for the furniture which the bondholders had bought and paid for in 1924, and again were assured in 1928, remained as part of the security for their new bonds. These devices and litigations have continued for ten years."

As we have heretofore shown in our statement and analysis of the pleadings, there are surprise issues in this case which were never raised below, but they have been raised by petitioner, not by the Circuit Court of Appeals.

III.

THE UNITED STATES CIRCUIT COURT OF APPEALS CAREFULLY ANALYZED THE EVIDENCE AND PROPERLY APPLIED RULE 52 OF THE RULES OF CIVIL PROCEDURE.

The Court Trustee says that the Circuit Court of Appeals overruled the findings of the trial court without first having analyzed the evidence. If petitioner means that the court failed to discuss *pro* and *con* all the evidence bearing upon each and every issue in the case and lay bare the mental processes by which it reached its conclusion that the essential allegations of petitioner's pleading were not sustained, then we do not agree that a court has any such duty. The fact is, as disclosed by the opinion, that the court—at great trouble and without the assistance from petitioner which it was entitled to expect—did carefully review the record and consider the evidence on each point before deciding that such findings as were necessary to support the decision of the District Court were clearly erroneous (R. 958).

As the court of course knows, prior to the adoption of Rule 52 of the Rules of Civil Procedure, the power of a reviewing court to reverse findings of fact on writ of error or appeal in a law case and in an appeal in an equity case

were dissimilar. Rule 52 makes applicable to both law and equity cases the prior equity rule. (See cases cited under this point.)

In support of his Point III, petitioner, under his Points and Authorities, cites the single case of *Dooley* v. *Pease,* 180 U. S. 126, but in footnote 344 under his argument on Point III, adds four cases which he says are to the same effect as *Dooley* v. *Pease.*

The cases of *Dooley* v. *Pease, H. H. Cross Co.* v. *Simmons,* 96 Fed. (2d), 482, and *U. S.* v. *Tyrakowski,* 50 Fed. (2d) 766, arose at common law before the adoption of the Rules of Civil Procedure.

In re Peacock Food Markets, 108 Fed. (2d) 453 was an equity case. The court reviewed the conflicting evidence and said:

> "We believe there was *substantial* evidence to support the finding that the mortgage was given by the bankrupt and received by the claimant to actually hinder, delay and defraud creditors of the bankrupt." (italics ours)

In *Scavenger Service Corp.* v. *Courtney,* 85 Fed. (2d) 825, an equity case, the court found the testimony on the two sides in such sharp and utter contradiction that there was no decisive factor other than the relative credence to be given the opposing witnesses. In this situation it affirmed the finding.

Petitioner's queer concept of the duty of a reviewing court is clearly set forth in paragraphs 4 and 5 of his petition for rehearing (R. 976) in which he says that the reviewing court should search the records for itself—without assistance from him—and then, before setting aside any finding, demonstrate by its opinion that there is an absence of conflicting evidence. In his 90 page brief in the Circuit Court of Appeals, 38 pages of which are devoted to a reiteration of the findings and a discussion of the Statute of

Gloucester, he, himself, stated that he could not, within the limits of a brief, make the very analysis which he expects the court to make in its opinion.

Petitioner also states that when the Court of Appeals came to the question of fees, it merely said:

> "We have concluded those findings were without substantial support."

The reference is to Record 453, but the quoted portion is to be found at Record 969. The Court of Appeals was not referring to a question of fees; it was talking of items contained in Finding 55 (R. 789) on account of which the Court Trustee was seeking recovery by way of counterclaim and the quoted conclusion was preceded by a careful analysis and discussion of every one of those items.

The court, however, does speak of other findings at Record 958, where it says:

> "Appellants and others are charged with having knowingly participated in a conspiracy to defraud the bondholders. The findings are of such serious character that we have read and reread them and searched the record with a view of endeavoring to ascertain if they find support."

and at page 965 the court states:

> "In reaching this conclusion, we are not unmindful of the rule which requires us to accept findings of the trial court supported by substantial evidence. Here, however, they are predicated on a theory of an existence of a conspiracy to which appellants were parties. We are satisfied no such conspiracy was proven."

Of course, the court did not designate, by number, which findings it was sustaining and which findings it was overruling, but, as is usual, overruled such findings, and only such findings, as were necessarily contrary to the conclusions which it reached.

IV.

THE UNITED STATES CIRCUIT COURT OF APPEALS DID NOT ERR IN DENYING THE COURT TRUSTEE'S MOTION TO DISMISS APPEALS 7060 AND 6986.

The Court Trustee's motion to dismiss appeal 7060 taken *as of right* was predicated on the proposition that the appeal involved only the question of fee allowances, and that since the decision in *Dickinson Industrial Site* v. *Cowan*, 309 U. S. 382, such appeals may be taken only by leave; and also on the further proposition that ever if questions other than fee allowances were involved so that an appeal by right was necessary, it was not perfected within the time or in the manner provided by the law and the rules then in effect.

The Court Trustee's motion to dismiss Appeal 6986, *the appeal by leave*, was based on the proposition that the mode or method for perfecting an appeal by leave is prescribed and controlled by the Rules of Civil Procedure and that the appeal was not perfected within the time or in the manner provided by the later rules.

Both appeals were taken by us from the decree entered May 2, 1939, and from the findings of fact which by reference had been incorporated into that decree. The decree disposed of issues which arose on the final report and account of City National Bank and Trust Company of Chicago, as Indenture Trustee, on the claim of City National Bank and Trust Company of Chicago in its own behalf, on the petitions for fees and expenses of administration filed by the Committee and its counsel, the objections of the Court Trustee to all of the foregoing and upon the counterclaim of the Court Trustee seeking to surcharge the Indenture Trustee with substantial sums for alleged wrongful acts and omissions in the management and operation of

the mortgaged premises. Quite aside from the question of fee allowances findings were involved, in themselves prejudicial to the appellants, on which the Court Trustee was seeking to recover large sums in his appeal 7061.

Moreover, at the time the appeal was taken, the Circuit Court of Appeals for the Second Circuit in *London* v. *O'Dougherty*, 102 F. (2d) 524 had held that the proper method to appeal on fee questions was by notice under the Rules of Civil Procedure. Shortly after we had perfected the appeal by right the Circuit Court of Appeals for the Seventh Circuit *in re Albert Dickenson Co.*, 104 F. (2d) 771, held that as to fee questions appeals were only by leave.

As the question of fee allowances and expenses could have been raised only by an appeal by leave and as all of the other matters as to which the appeal was sought could have been raised only by appeal by right, it was necessary to appeal both ways.

The fact that the appeal by leave raised other questions in addition to those involving fee allowances was not grounds for dismissal of that appeal, nor was the fact that the appeal by right included the question of fee allowances ground for its dismissal, since there were questions left for review which could only be reviewed by appeal taken in that manner. There is, therefore, no basis for the contention that by appealing by one method we were estopped to appeal by the other.

As to the appeal by right, we admit that it is governed by the Federal Rules of Civil Procedure, particularly Rules 73 and 75.

In that appeal, that is the one by right, number 7060, we filed our notice of appeal on June 1, 1939 (R. 796) or within thirty days of the date of the entry of the decree appealed from. Accordingly under Rule 73(g) we were required within forty days of June 1, 1939 to file the record

in the United States Circuit Court of Appeals unless the District Court granted further time on motion made within the forty-day period.

The claim of the Court Trustee was that the record not having been filed until August 19, 1939 which was more than forty days after the filing of the notice of appeal, there was no compliance with the rule and accordingly the appeal was not perfected.

As the Court Trustee well knows, on July 7, 1939 the District Court did extend the time. The order does not appear in the printed transcript here but it is admitted by the Court Trustee; for in motion to dismiss, made in the Circuit Court of Appeals, he said, *"On July 7, 1939 appellant secured an order in the District Court extending time until August 19, 1939 for docketing said case on appeal; and within said time did so docket said appeal in said Court of Appeals as Case No. 7060"* (R. 888). See also original transcript of record from the Clerk of the District Court, pages 477 and 478, at which the order of the District Court appears.

Why didn't the petitioner inform the Court of this fact in presenting his "Reasons One, Three and Four" at page 78 of his brief? We have called attention to the fact each time that he made the motion to dismiss.

It is manifest that the record on the appeal by right was filed strictly in accordance with the Federal Rules of Civil Procedure.

While it is true that the Federal Rules of Civil Procedure superseded all rules of the Circuit Court of Appeals which were conflicting, the fact remains that the Federal Rules of Civil Procedure relate only to appeals by right and are entirely silent as to appeals to be taken by leave. An examination of Rule 73 confirms this assertion.

It follows that the procedure on appeals by leave was

controlled by the rules of the United States Circuit Court of Appeals for the Seventh Circuit in effect at the time the appeal by leave was taken and allowed. Those rules remained in effect until November 10, 1939, when the present rules of the United States Circuit Court of Appeals for the Seventh Circuit became effective.

What then were those rules and what did they provide? le 13, Section 1, provided among other things that the nscript should be filed with the Clerk of the Court of Appeals on or before the return day specified in the citation unless the time was enlarged by a judge of the District Court or by the Court of Appeals or some judge thereof. Section 3 of Rule 13 provided that the citation must be returnable within thirty days from the date on which the appeal was allowed, which it was in this case (R. 834). On June 12, 1939 we petitioned the Court of Appeals for leave to appeal. On June 22, 1939 leave was allowed and citation issued returnable July 22, 1939. Accordingly, the record was due in the Court of Appeals on July 22, 1939, but on July 19, 1939, a short record having been filed, we made a motion in the Court of Appeals to enlarge the time for the filing of the full record, which was allowed on July 21, 1939 and the time extended to September 16, 1939 (R. 873). On August 19, 1939 we filed a full record in appeal 7060, the one taken by right. That having been done, on September 8, 1939, within the time as enlarged for filing a full record in appeal 6986, we moved in each case that the two appeals be consolidated and that the record filed in the appeal by right, together with the short record filed in the appeal by leave, stand as the record in both cases (R. 876). The order was that appeal 6986 and 7060 be consolidated as Cause No. 6986; that the transcript of record filed with the Clerk in 6986 and the transcript of record filed in 7060 be consolidated and stand as the single consolidated transcript of record in both of said appeals as so consolidated (R. 920).

Even if by any possibility the Federal Rules of Civil Procedure rather than the then existing rules of the Court of Appeals controlled appeals taken by leave, the Court Trustee's contention that that appeal should be dismissed because the record was not filed within the time fixed by the Federal Rules of Civil Procedure would be without merit; for it is a familiar rule of this Court that if an appellant fails to file his record on time, the appellee may have the cause docketed and dismissed. If, however, the appellant files his record late but before the appellee has moved for dismissal there is no penalty. The present Rule 11 of the Court of Appeals as adjusted to conform to the Federal Rules of Civil Procedure is substantially to the same effect.

Since the appeal by leave was taken, the United States Circuit Court of Appeals for the Seventh Circuit amended its rules effective November 10, 1939. Presently Rule 31 controls appeals in bankruptcy cases where they are discretionary. Section 3 of Rule 31, among other things provides that if the appeal is allowed the petitioner is to file his transcript of the record within twenty-five days from the date of allowance unless the time is enlarged by the Court of Appeals or a judge thereof. So that even now, the Rules of Civil Procedure do not contain provisions relating to appeals by leave but those appeals are controlled by the rules of the various Circuit Courts of Appeals.

The Trustee further contends that if appeal 7060, the one by right, were invalid and had been dismissed, appeal 6986 would also have to be dismissed because there would then be a good appeal dependent entirely on the record in a bad appeal, which had been dismissed carrying the record with it.

The contention is without merit. By the terms of the consolidation order, the single consolidated record was just

as much a part of appeal 6986 as it was of appeal 7060, and after dismissal of appeal 7060 the record would remain the record in appeal 6986.

V.

THE UNITED STATES CIRCUIT COURT OF APPEALS DID NOT RULE THAT THE DISTRICT COURT WAS WITHOUT POWER TO REVIEW, READJUST AND DISALLOW FEES ALLOWED BY DECREE OF THE STATE COURT.

Whether prior to the Chandler Act a Court of Bankruptcy could review fee allowances that were fixed by final decree in a State Court foreclosure proceeding is a question which was neither involved nor decided by the Circuit Court of Appeals.

The quotation from the opinion of the Circuit Court of Appeals at the bottom of page 81 of petitioner's brief shows that that court found that claimants had waived any right which they might have had under the then bankruptcy act to insist on the binding effect of the State Court decree as to the allowances there made and had submitted to the District Court for consideration the question of their reasonableness. Furthermore, the remanding order expressly directs the court to fix reasonable fee allowances for all services performed including those in the State Court.

The remarks contained in the first three quotations on page 81 of petitioner's brief, as admitted by petitioner, were made by the Circuit Court of Appeals in reference to items in the counterclaim of the Court Trustee which were not fee allowances and any law that fee allowances are reviewable is of course not applicable to those items. As the Circuit Court of Appeals pointed out, the amounts there under discussion, if allowable at all, could not be reduced, but could be disallowed *in toto* in case of fraud which it found did not exist. (R. 962.)

Nor did the Circuit Court of Appeals hold that a bankruptcy court never has the power to disallow *in toto* fee claims of parties whose claims have been allowed by a State Court but may only determine their reasonableness. On the contrary, it held that in this case there was no fraud and hence it was error to deny fees *in toto*. And of course, granting a right to deny fees entirely, it would be error to do so unless there were just cause.

The implication at page 82 of petitioner's brief that the State Court never fixed the amount of fees because it refused to approve City National's accounts is of course without basis as the allowances were fixed by the decree, not by the account. See paragraph 12 of the decree. (R. 511.)

Conclusion.

The petitioner's demand that all the fees and expenses of respondents be denied was predicated on asserted breaches of trust of so serious a character that their proof might well have serious results.

Stripped of collateral matter, petitioner's claim is that respondents, being responsible and liable for misrepresentations to the bondholders, entered into a "conspiracy" to use the funds of the trust estate to avoid the consequences of their own wrongs.

One would suppose that a "Court Trustee"—in a position calling for the exercise of fairness and impartiality—would not make charges of the kind here made without careful preliminary investigation and reasonable certainty that there were ample grounds to sustain them.

For, unlike a private litigant who must pay the costs of litigation groundlessly or maliciously initiated by him, the expenses of a court trustee's suit must be borne by the estate if he is unsuccessful.

That is the reason for the rule that a trustee who engages

in litigation and acts as his own attorney therein must forego all fees for his legal services. It is a salutary rule—the result of long experience with the consequences of natural human weakness.

In the instant case the Trustee has acted as his own counsel in numerous pieces of litigation, most of which have reached this court and in all of which he has been unsuccessful.

Weightstill Woods, Court Trustee, Petitioner, v. *Indemnity Insurance Company of North America,* 308 U. S. 557.

Weightstill Woods, Court Trustee, Petitioner, v. *Granada Apartments, Inc., et al.,* 308 U. S. 639.

In re Granada Apartments, Inc., 104 Fed. (2nd) 528.

In re Granada Apartments, Inc., 111 Fed. (2nd) 834.

He has been allowed on account of his services in matters other than the collateral litigation the sum of $7,500 (R. 962), which figures roughly at the rate of $10 per hour. He has filed a petition with the District Court in which he asks compensation for the collateral litigation, and shows thereby 3,722 hours spent on those matters and estimates that they will require 200 hours more.

The result of that litigation has been that, although the plan of reorganization was formulated, presented, and confirmed within about two months after the filing of the petition, nearly four years have elapsed and the final decree has not yet been entered.

We respectfully submit that the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

VINCENT O'BRIEN,
JOHN MERRILL BAKER,
TRACY WILSON BUCKINGHAM,
(DEFREES, BUCKINGHAM, FISKE & O'BRIEN),
Counsel for Respondents.

APPENDIX "A."

Findings 1—10.

Relate to filing and approval of 77B petitions, appointment of court trustee, and to the pleadings, and proceedings had thereon.

Findings 11—57.

In 1924 Chi. Trust Company underwrote separate bond issue constr... on loans respectively made by three corporations owning the Granada, Arlington and Lincoln Park Manor hotels.

Granada contained a plant which provided heat, refrigeration, hot and cold water for its own needs and to the other hotels, which service it was still furnishing when these 77B proceedings were instituted. It contained a large amount of public space, including a solarium, writing room, ballroom and lobby which had for many years been used by guests of all three hotels.

Albert Pick and Company supplied the furniture and equipment to the Granada on open account and chattel mortgage.

In 1928 a refinancing of the Granada was carried out by a new first mortgage of $525,000 (of which $25,000 was subordinated to the balance) and a second mortgage of $360,000. Chicago Trust Company underwrote forty per cent and Cody Trust Company sixty per cent of the new First Mortgage bonds. Chicago Trust Company was named as trustee in both the first and second mortgage trust deeds.

The prospectuses issued by Chicago Trust Company and by Cody Trust Company stated that the security included the furniture and fixtures at the Granada Hotel.

In 1929 Granada Hotel Corporation conveyed sundry assets to Granada Apartments, Inc., debtor, which assumed the 1928 first and second mortgages but not the Pick chattel mortgage, which was not paid off out of the proceeds of the 1928 loans. Granada Apartments, Inc. from the beginning was officered by employees of Cody Trust Company and was wholly under its control.

In 1928 Albert Pick and Company obtained a decree to foreclose its chattel mortgage. Cody Trust Company, by Wenstrand, its nominee or employee, brought suit in the Federal Court to enjoin sale under that decree. A temporary injunction issued, but Pick ultimately prevailed June 2, 1930, and then filed suggestions of damage against plaintiff, Wenstrand, and the surety, Indemnity Insurance Company of North America.

Pick intervened in foreclosure proceedings on the Granada pending in the Superior Court of Cook County, Illinois, and asked that the Receiver there surrender possession of Pick's property. In August, 1930, the Receiver surrendered the furniture, but the Superior Court reserved and thereafter determined in favor of Pick the question of whether the equipment, to wit, inador beds, carpets, china cabinets and other items, were fixtures and thus part of the real estate or personalty covered by the Pick chattel mortgage. In 1933 its decree was affirmed after an appeal to the Appellate Court of Illinois and certiorari to the Supreme Court of Illinois.

Pending these proceedings new furniture was purchased for the hotel under a contract which through payment of Granada moneys had been reduced to $3,000 when these 77B proceedings were begun. Continental Illinois National Bank and Trust Company filed its claim for this item which the confirmed plan prepared and presented by respondents provided was to be paid in cash.

In July, 1931, Chicago Trust Company and Central Trust

Company of Illinois consolidated and became Central Republic Trust Company, which claimed to be successor trustee under the 1928 trust deeds. October 5, 1932, City National Bank and Trust Company was organized and took over the deposit liabilities of Central Republic Trust Company.

When, in the Superior Court foreclosure proceedings it was determined that Pick could remove its equipment claimed to have been fixtures, $21,500 was paid it for equipment and $2,000 was paid to Defrees, Buckingham, Jones & Hoffman as attorneys' fees. These payments were authorized by order of the Superior Court. Of the moneys so paid $13,000 was provided from Granada funds and $11,500 from the proceeds of a receiver's certificate of indebtedness purchased by Indemnity Insurance Company of North America on the understanding that the suggestion of damages pending against it would be dismissed by Pick. Thereafter $7,500 was paid from Granada funds reducing the certificate to $4,000, for which, with interest, claim was made in the 77B proceedings by Indemnity Insurance Company of North America. The Superior Court was not informed of the suggestion of damages or of the proposed dismissal thereof. Until in the 77B litigation original documents were produced from the files at the home office of Indemnity Insurance Company of North America it was not known to any court or Granada creditors that officials of Cody Trust Company and Wenstrand had agreed to purchase the receiver's certificate if it was not paid off, nor that Wenstrand and others were indemnitors upon the bonds in said injunction proceedings.

Wenstrand had signed the first mortgage bonds. He, Riddle and Cody were indemnitors to Indemnity Insurance Company of North America, which had been told that the Wenstrand injunction suit was in reality for Cody

Trust Company; Cody Trust Company had agreed to remove the Pick chattel lien as between Cody Trust Company and Chicago Trust Company; and Cody's and Chicago Trust Company both had in 1928 represented to the bondholders that the furniture and personal property of the Granada was part of the security.

All the litigation prior to August, 1933, had affected only the second mortgage trust deed. In that month the crossbill to foreclose the first trust deed was filed and the receiver's certificate was asked for. The foreclosure decree was not entered until December 18, 1936. The last interest paid to first mortgage bondholders was for 1931.

Until January 12, 1934, Chicago Title and Trust Company was only a custodian of net rents paid to it. By order of that day for the first time it was directed to take possession of the property. Before that it was forbidden by court order to do so.

Cody Trust Company went into receivership about December, 1933. In March, 1934, the receivership (the foreclosure receivership—not that of Cody Trust Company) was terminated by order of the Superior Court, which turned the property over to Central Republic Trust Company, trustee under the first mortgage, and allowed the receiver $3,000 for services.

Central Republic Trust Company went into receivership near the end of 1934. Thereupon an order was entered by the Superior Court purporting to have the Central Republic Trust Company and its receiver resign the trusteeship under the 1928 Granada trust deed and upon motion and petition of the Committee appointing City National Bank and Trust Company successor trustee.

The Committee had been organized in April, 1933, by and among minor officers, employees and nominees of City National Bank and Trust Company. Claims were filed in these 77B proceedings upon Granada 1928 second

mortgage bonds by various Chicago banks, who held them as collateral for loans to Cody Trust Company.

Respondent attorneys have been active in all of these matters since 1924 and have had to do with most of these litigations. It does not appear that City National or anyone tried at any time to have the Codys, the Cody Trust Company or its officers, Chicago Trust Company or its officials or any successors or receivers for them, or Wenstrand and the other indemnitors perform their promises and duties to the Granada property and the Granada bondholders.

On October 5, 1932 City National took over from Central Republic and now continues as part of its Trust Department a personnel organized and called the Corporate Reorganization Division. The names of Committee members are chosen from among employees or officers of City National.

This method was pursued with relation to the Arlington and Lincoln Park Manor Hotels. The Arlington has been reorganized through a foreclosure in the Circuit Court. The Arlington, Inc. is a new corporation set up for that property. The Lincoln Park Manor is still in process in that Court. City National was trustee under the Arlington and Lincoln Park Manor issues.

The Committee when formed by City National for the Granada included representation for Cody Trust Company and two secretaries were appointed, one with relation to the bondholders' list of Chicago Trust Company and the other in relation to the bondholders' list of Cody Trust Company.

The minutes of the Granada Committee do not show that any constructive action was ever taken looking toward a reorganization of the Granada property prior to the discussion in the present 77B proceedings, except there

* See testimony Johnson re action not reflected in minutes. (R. 436.)

was a refusal to accept an offer of twenty cents on the dollar for bonds on deposit with the Committee and City National as its depositary.

City National claimed to be trustee under the 1928 first mortgage trust deed. The fullest control was taken over all manner of personal property, including notes and other securities representing general moneys due to the debtor's estate. In relation to the proceedings in *Tuttle* v. *Harris* in the United States District Court, the Circuit Court of Appeals and the United States Supreme Court (297 U. S. 225) they took and maintained the position that they were trustee in possession and free from court control, and to pay themselves for doing so they appropriated about $4,000 of Granada money.

City National Exhibit X was prepared by Defrees, Buckingham, Jones & Hoffman, attorneys, who in this accounting litigation represent the City National, the Committee and the Arlington, Inc. They filed the Thuma foreclosure in 1930. They withdrew as counsel for Thuma and appeared on the opposite side of the record as counsel for Chicago Trust Company, the Bondholders' Committee, and then the City National. Throughout they have represented the Committees on the Granada, Arlington and Lincoln Park Manor properties and the City National as Trustee therefor. Neither they nor the Committee nor the Trustee presented any plan at any time for the joint operation or unit reorganization of the three properties. From that time these properties were bondholders' equities.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

Nos. 281-282

IN THE MATTER OF GRANADA APARTMENTS, INC.,
DEBTOR.

WEIGHTSTILL WOODS, COURT TRUSTEE,
Petitioner,

vs.

CITY NATIONAL BANK AND TRUST CO. OF CHICAGO, AND OTHERS,
Respondents.

MOTION.

WEIGHTSTILL WOODS, *Court Trustee,*
Petitioner.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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IN THE

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vs.

CITY NATIONAL BANK AND TRUST CO. OF CHICAGO, AND OTHERS,
Respondents.

MOTION.

Petitioner respectfully makes motion that the court will excuse the printing of four large volumes of the *original record filed in the District Court* in this cause on December 30, 1937. These *original volumes* by a special order of the District Court dated June 14, 1939 were sent by the Clerk of said court to the Clerk of the Circuit Court of Appeals, and were held by him without filing and without notation on his docket. The Clerk of the Circuit Court of Appeals sent them to the Clerk of this court pursuant to Praecipe (PR. 1035) and pursuant to special order of the Circuit Court of Appeals entered

June 16, 1940. (PR. 1002-1003.) Petitioner submits herewith detailed suggestions as to said *four volumes of original record,* to show that printing them at this time would serve no useful purpose.

Respectfully submitted,

WEIGHTSTILL WOODS,
As Court Trustee, Petitioner.

SUGGESTIONS AS TO PRINTING.

The Printed Record Before This Court.
Three Printed Volumes, 1037 Pages.

(1) The Court Trustee, as petitioner, respectfully says that all pertinent records, orders and proceedings which occurred in the Circuit Court of Appeals, have been printed for use in this court pursuant to the praecipe therefore, which was filed in the Circuit Court of Appeals on July 15, 1940. (See PR. Pages 1034-1037.) Counsel for respondents did not file any counter-praecipe, nor any objections.

(2) Petitioner also shows that all parts of the record certified from the District Court, that were printed upon request of respondents for use in the Circuit Court of Appeals, are before this court in printed form. (See certificates at PR. 420a and 639.) Said printed matter used in the Circuit Court of Appeals (PR. Pages 1 to 837), was made pursuant to order October 4, 1939 by the Circuit Court of Appeals. (PR. 833.) In addition to parts from the *copy* of record as *certified* by the Clerk of District Court (PR. 816), said printed matter includes a summary of evidence and exhibits prepared by opposing counsel and handed to the Clerk of the Circuit Court of Appeals. (PR. 171 to 657.) That summary was made after record was filed in the Circuit Court of Appeals. The summary was never filed nor any notation of lodgement made on the docket of any court.

The Subject Matter of This Motion.

Four Unprinted Volumes from Trial Court, Which Are Original Record in District Court.

(3) Petitioner says that after the trial in the District Court, four large volumes were assembled by the Court Reporter who attended the trial. They include documentary evidence, testimony and pleadings, considered by District Court in making its findings and decree. These four volumes were presented to the District Court for approval, and were filed in that court pursuant to an order of that court on December 30, 1937. An inspection of said four volumes of evidence and exhibits (now on deposit with the Clerk of this Court) shows that they are *original record* from the District Court, filed in that court on December 30, 1937, and not filed at any time in the Circuit Court of Appeals. Said four volumes are not mentioned at any place on the docket of the Circuit Court of Appeals, and are not mentioned in the transcript of record from that court filed in this court, except that the praecipe by petitioner asks that said volumes be sent here under Rule 10(4). (PR. 1035.)

(4) When respondents contend that said *four volumes of original record* ever became a part of the appeal record, they speak wishfully. The contention is not sincere because (1) said documents were never filed in the Circuit Court of Appeals, because (2) respondents in that court stated to that court that said documents were "lodged" with the Clerk, and because (3) no entry was ever made as to said documents in the docket of said Court of Appeals. On September 8, 1939 the respondents filed their motion wherein they stated positively to the Circuit Court of Appeals that said four volumes of exhibits and evidence were "lodged" in that court. Now in

August 30, 1940 by their answer, they tell this court the exact opposite, that said volumes were part of the record in said Court of Appeals. That this is mere assertion is proven by their failure to point to any entry of the record to support their contention.

(5) If counsel for respondents ever thought at any time that said original volumes could be matter of record on review, why did they ask the Circuit Court of Appeals to approve their failure to print any part whatever of said four volumes? If said volumes were thought to be matter of record on review, how absurd for counsel to have sent up by a special order of the District Court said four volumes, then immediately to ask the Circuit Court of Appeals for the printing order which does not mention said original record, four volumes of evidence and exhibits? (PR. 833.)

(6) In addition to said *certified copy* of record (mentioned at paragraph 2 above) as certified to the Circuit Court of Appeals (PR. 816), and over the objection made by the Court Trustee, the respondents after they appealed to the Circuit Court of Appeals, secured an order to send this original record of four volumes (mentioned at paragraphs 3-5 above) to the Circuit Court of Appeals. These four volumes are not certified to the Circuit Court of Appeals, and were never filed in the Circuit Court of Appeals, but were in the custody of the Clerk of that court until they were sent to this court.

(7) These volumes bear the filing stamp of the District Court, but no filing stamp of the Circuit Court of Appeals, and there is no entry on the docket of the Circuit Court of Appeals at any time with reference to these four volumes. The record nowhere shows whether or not the Judges of the Circuit Court of Appeals examined or made use of these four volumes, nor what use, if any,

they did make of them. The order for consolidation and printing of records made by the Circuit Court of Appeals on October 4, 1939, does not mention them. (PR. 833.)

The Motion Now Made.

(8) Your petitioner understands and contends that Rule 10(4) of this court and similar rules of the Circuit Court of Appeals and of the District Court, provide for sending original records and documents from one court to another, but do not intend that such original records and documents shall dispense with usual *certified* copy of the record of whatever matters are deemed essential to review. Your petitioner understands and contends that said Rule 10(4) and like rules are made for the purpose of permitting the reviewing court to see original documents for purposes of comparison and better understanding of the certified record, and that documents and other original record which are forwarded to reviewing court under such rules, cannot serve any other purpose. The praecipe under which said original volumes are sent to this court, specifically mentions Rule 10(4) as the reason. (PR. 1035.) No counter-praecipe was filed by respondents. The Praecipe reads as follows:

> "You are requested not to print, but to send to Washington as original Exhibits, the four volumes which were certified and approved by the District Court on December 30, 1937, and were sent to this court pursuant to special order by the District Court on June 14, 1939. Your authority for sending these documents as special Exhibits will be found in the order by Circuit Court of Appeals dated May 16, 1940; and Rule 10(4) by the Supreme Court."

(9) To print such original record and documents, which are forwarded under such orders and rules, would defeat rather than promote such purpose, and would really be duplication of matter already printed, so far as the rec-

ord has been printed. To print said four volumes of original District Court Record in this cause, would cost perhaps four thousand dollars.

(10) Petitioner therefore urges his motion that the court will dispense with the printing of said four volumes of the original District Court record, or that the court will give appropriate directions.

Respectfully submitted,

WEIGHTSTILL WOODS,
Court Trustee, Petitioner.

COUNTY OF COOK,
STATE OF ILLINOIS. } ss.

WEIGHTSTILL WOODS, being first duly sworn, states that he has prepared the foregoing motion and suggestions; that he is familiar with the records in the several courts; and the statements made in the foregoing motion and suggestions are true, to the best of his knowledge and belief.

WEIGHTSTILL WOODS.

SUBSCRIBED and SWORN to before me this Fourteenth day of September, A. D. 1940.

MARIAN F. MANCE,
Notary Public, Cook County, Ill.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

Nos. 281-282

IN THE MATTER OF

GRANADA APARTMENTS, INC.,

DEBTOR.

WEIGHTSTILL WOODS, COURT TRUSTEE,

Petitioner,

vs.

CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AND OTHERS,

Respondents.

MOTION FOR A RULE UPON RESPONDENT ATTORNEYS TO SHOW CAUSE WHY THEY FAIL TO REPAY AND REFUND TO GRANADA ESTATE, IN ACCORDANCE WITH THE OPINION OF THIS COURT, $5,500 IN FEES MISTAKENLY PAID TO AND IMPROPERLY RECEIVED BY THEM.

WEIGHTSTILL WOODS,
Attorney for Court Trustee,
77 West Washington St.,
Chicago, Illinois.

JAMES GLENN MCCONAUGHY,
On the Brief.

THE BUNTHORP-WARREN PRINTING COMPANY, 810 WEST JACKSON, CHICAGO

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To the Honorable, the Justices of the Supreme Court of the United States:

Petitioner respectfully makes motion that Your Honors

enter a rule upon respondent attorneys, and upon their firm Defrees, Buckingham, Jones and Hoffman, as officers of this court and as parties to this case, to show cause why they should not, in accordance with the rule affirmed by Your Honors' opinion in the case at bar, repay and refund to Granada Estate and to the Court Trustee, certain moneys collected by them as legal fees from Granada Estate in the sum of $5,500 together with interest at six per cent, pursuant to the suggestions which follow.

Respectfully submitted,

WEIGHTSTILL WOODS,
As Court Trustee.

SUGGESTIONS IN SUPPORT OF MOTION.

On February 3, 1941. Your Honors filed the opinion of the court in cases 281 and 282. This dealt with fiduciary duties and the denial to fiduciaries of fees when they act in breach of trust. In this opinion Your Honors determined (1) that mortgage trustees, bondholders committees and lawyers are fiduciaries, and (2) that when such fiduciaries serve conflicting interests, they disentitle themselves to fees.

Upon application of this rule against serving more than one master, recovery of a requested fee *balance* of some $24,500 was denied by the District Court to respondent attorneys and their law firm, Defrees, Buckingham, Jones and Hoffman. The denial was confirmed by Your Honors on February 3, 1941. As above suggested this claim for $24,500 was *a balance* which counsel for the bondholders' committee and the mortgage trustee were asking as legal fees. From the printed record as prepared by respondents, and filed in this court, it appears that this sum was a balance on an estimated $30,000 fee and that some $5,500 had already been paid to and pocketed by respondent law firm.[1] The nature of the fees so paid is stated at Appendix "B" of these suggestions.

In view of Your Honors' opinion of February 3, 1941, your petitioner as Court Trustee, believes it is his duty[2]

1. At PR. 495-496 it appears that a member of respondent law firm testified:

"In my opinion reasonable compensation for all our services would be not less than a total of $30,000, *with credit for the payments of* $5,500 *heretofore made us*, and so we request a present net allowance to us of $24,500. There are no requests for disbursements."

2. In the case of *Pueblo Savings & Trust Co.* v. *Power* (C. C. A. 7, 1940), 115 Fed. (2d) 69 at 72, the court observed that:

"A trustee in bankruptcy stands in a different relation to the court from that of a mere creditor. He is an officer of the court, as well as the owner of an interest. It is his duty to collect the assets and he is responsible for failure so to do."

to call this matter to the attention of Your Honors, to the end that respondent attorneys make restitution of said $5,500 to this petitioner as Court Trustee, for the benefit of the Granada Estate. In performance of petitioner's duty a demand was served upon respondent attorneys on February 24, 1941. This notice is set forth as Appendix "A" to these suggestions. Since respondent attorneys have had the opportunity voluntarily to comply with the ethical requirement of the situation at bar, petitioner respectfully presents this motion and said prior notice, and asks that a rule be entered upon respondent attorneys to show cause why they should not refund and repay such moneys. In response to such rule of this court, if entered, respondent attorneys (who are now before Your Honors on their general appearances) may repay these funds,[3] or show cause, if any, why they should be excused.

Respectfully submitted,

WEIGHTSTILL WOODS,
Attorney for Court Trustee.

---

3. Petitioner believes that the respondent attorneys will wish to demean themselves "uprightly, and according to law" within the meaning and intendments of Your Honors' opinion in the case of *In Re Gilbert*, 276 U. S. 6 (1928) and should voluntarily repay such improperly received fees. In that case Your Honors stated that the respondent was an officer of the court and as such (Pp. 9-10):

> "He could not rightfully accept or retain anything as compensation unless sanctioned by proper order of court. Reception then or now of a gratuity from any party would be indefensible, and whether or not the corporations which paid him by direction of the court are satisfied with the result is now unimportant. He has long been an attorney and counsellor authorized to practice at this bar under the sanction of an oath to demean himself 'uprightly, and according to law' * * * He knew that he had got unearned money by improper orders of court, but he decided to keep it. Such conduct is far from 'upright and according to law' within the fair intendment of those terms."

APPENDIX "A".

DEMAND SERVED ON DEFREES, BUCKINGHAM, JONES & HOFFMAN.

IN THE SUPREME COURT OF THE UNITED STATES,

October Term, 1940.

Nos. 281-282.

281.
WEIGHTSTILL WOODS, Court Trustee, *Petitioner*,
vs.
CITY NATIONAL BANK AND TRUST CO. OF CHICAGO, and others,

282.
WEIGHTSTILL WOODS, Court Trustee, *Petitioner*,
vs.
CITY NATIONAL BANK AND TRUST CO. OF CHICAGO, and others,

} On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

NOTICE.

To: Defrees, Buckingham, Jones & Hoffman, and each and all members of said law firm,
105 South La Salle Street, Chicago, Illinois.

YOU ARE REQUESTED, as respondents and attorneys of record in these matters, to pay to the Court Trustee the sum of $2000, which you received on August 24, 1933 from Granada bondholders treasury; and the sum of $3500, which you received April 13, 1935, from Granada bond-

holders treasury, together with interest at six (6%) percent on said sums, to be accrued from the time you received said monies as for legal fees, until repayment shall be made.

Your duty to repay these monies to Granada treasury, appears from your admission at various places in the record that you received the monies as for legal fees (PR. 479, 484, 496 are examples); and from the ruling made by the District Court on May 2, 1939, which was confirmed by the Supreme Court on February 3, 1941, that you were acting in conflicting capacities and therefore were not entitled to receive fees from Granada treasury.

Your duty further appears from Canons of Professional Ethics of the Chicago Bar Association, the Illinois State Bar Association, and the American Bar Association (see page 69, Petition for Writs of Certiorari); and also appears from these cases: *Strong* v. *International Building, Loan & Investment Union,* 183 Ill. 97 at 100, 55 N. E. 675; *People* v. *Gerold,* 265 Ill. 448 at 477, 107 N. E. 165 at 177; *Re Gilbert,* 276 U. S. 294 at 296, and 276 U. S. 6 at 9-10.

PLEASE be advised that unless said monies are repaid in full to the Court Trustee, before March 1, 1941, this notice and an appropriate motion will be presented to the Supreme Court for its consideration.

Respectfully submitted,

WEIGHTSTILL WOODS,
as Court Trustee.

RECEIVED copy of foregoing notice February 24, 1941.
DEFREES, BUCKINGHAM, JONES & HOFFMAN,
By: VINCENT O'BRIEN (Signed),
A Member of said Law Firm.

APPENDIX "B".

The Two Fees Received by Defrees, Buckingham, Jones & Hoffman.

I. *The $2,000 fee.*

From the testimony of respondent counsel at PR. 479 and 477-478, it appears that this fee was received in August of 1933, in relation to the furniture or "fixture" litigation. This was at the conclusion of this particular litigation. Cody Trust Company went into receivership four months later (Pr. 479). In July of 1933, one month before this fee was received, respondent lawyers filed a bill to foreclose, "a public default having been made in the payment of both principal and interest due under the first mortgage." (PR. 480.) Thus it appears that the $2,000 was needed for payments to the bondholders. Your Honors' opinion states that (61 S. Ct. 496):

> "And respondent counsel had acted as general counsel for one of the two principal underwriters (Chicago Trust Company, which was also the original indenture trustee) during the financing of the property here involved; and that underwriter's prospectus was under attack in these proceedings."

The furniture litigation was wholly caused by the false prospectus of respondents' clients. The litigation kept the Chicago Trust Company from declared insolvency until 1934. Relating to this matter the District Court found that:

> "Services of said attorneys were performed to protect persons other than bondholders." (PR. 777.) (Finding 24.)
>
> "Respondents and the other signers, by stipulations assisted in this breach of trust, knowing that there would not remain money to pay the bondholders." (PR. 779.) (Finding 28.)

Also see testimony of Vincent O'Brien at PR. 499 ff.

Petitioner submits that this $2,000 fee should never have been paid or received in the first place, and that respondents were serving conflicting interests at the time payment was made.

II. *The $3,500 fee.*

A similar situation exists as to the $3,500, paid in April 9, 1935 for the case of Tuttle *vs.* Harris, which was brought to this court. That litigation was against the old Granada Hotel Corporation which had been dissolved in 1930, and did not exist.[4] The debtor estate, Granada Apartments, Inc., was not a party to that litigation. Under the guidance of respondent counsel, the committee intervened in that case, but never informed any court that the debtor estate was not a party to that suit. When the litigation was over, respondent attorneys again accepted money from the Granada Estate which was needed to pay first mortgage bond interest, for services not rendered for Granada Estate nor for any benefit to its bondholders. The District Court so found at finding 46, PR. 786.

While moral turpitude may aggravate a situation, yet, the Granada opinion by your Honors accurately states the basic rule thus:

> "Where an actual conflict of interest exists, no more need be shown in this type of case to support a denial of compensation."

4. Respondent firm itself handled this transaction in 1929 whereby the new corporation was created and all assets were transferred to it from the old Granada Company. At PR. 496-497 counsel said:

"I think it is substantially so that in 1929 we did handle the set up of the Granada Apartments, Inc., and the transfer from the old corporation. The legal work was handled in our office." Also PR. 502.

THE LAW OF ILLINOIS SINCE 1899.

Respondent counsel should not and cannot claim that Your Honors' opinion announces a new policy or changes the law in regard to the right to fees, for attorneys who have served conflicting interests. So far as attorneys are concerned, the rule announced by Your Honors' opinion is the same that was announced by the Supreme Court of Illinois over forty years ago in the case of *Strong* v. *International Building, Loan & Investment Union,* 182 Ill. 97, 55 N. E. 675 (1899), where the court ruled that an attorney, employed by an association to free it from receivers and who also accepted employment from one of the receivers who had an interest adverse to the association, could not recover for his services to the association, even though the association waived its objection to the conflicting representation. Speaking of the reason for the rule the court said:

> "Nor does it matter that the intention and motives of the lawyers are honest, as we fully believe them to have been in the present instance. The rule is a rigid one, and designed not alone to prevent the dishonest practitioner from fraudulent conduct, but as well to preclude the honest practitioner from putting himself in a position where he may be required to choose between conflicting duties, or be led to an attempt to reconcile conflicting interests, rather than to enforce to their full extent the rights of the interest which he should alone represent."

Respectfully submitted,

WEIGHTSTILL WOODS,
Attorney for Court Trustee,
77 West Washington St.,
Chicago, Illinois.

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FILE COPY

Office - Supreme Court, U. S.
FILED
MAR 1 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

Nos. 281-282

IN THE MATTER OF
GRANADA APARTMENTS, INC.,
DEBTOR.

WEIGHTSTILL WOODS, COURT TRUSTEE,
Petitioner,
vs.
CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AND OTHERS,
Respondents.

MOTION BY COURT TRUSTEE TO STRIKE RESPONDENTS' PETITION FOR REHEARING.

WEIGHTSTILL WOODS,
Attorney for Petitioner,
77 West Washington St.,
Chicago, Illinois.

JAMES GLENN MCCONAUGHY,
On the Brief.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

Nos. 281-282.

WEIGHTSTILL WOODS, COURT TRUSTEE,
Petitioner,

281 *vs.*

CITY NATIONAL BANK AND TRUST CO. OF CHICAGO, AND OTHERS.

WEIGHTSTILL WOODS, COURT TRUSTEE,
Petitioner,

282 *vs.*

CITY NATIONAL BANK AND TRUST CO. OF CHICAGO, AND OTHERS.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

MOTION BY COURT TRUSTEE.

Your Court Trustee, makes motion to strike the petition for rehearing sought to be filed by the respondents; and urges the following suggestions:

Respectfully submitted,

WEIGHTSTILL WOODS,
Court Trustee.

SUGGESTIONS IN SUPPORT OF MOTION.

The petition by respondents for rehearing is a complete departure from both the printed brief and the oral admissions made by the respondents in the Supreme Court. The appendices suggested for respondents are mere new assertion. They are not mentioned anywhere in the record. The petition and appendices are no more than an offer of original evidence in this court. Respondents seek now to begin, before this court, a new trial upon original issues. These afterthoughts by respondents are not supported by any pleading nor by any assignment of error anywhere. At pages 16-17, respondents' petition so admits when it states:

> "We submit that while the general principles laid down by the court in its opinion in reference to conflicts of interest are *sound*, and that while *the court may have had some basis on the record* alone for concluding that some of those principles were applicable in the instant case, nevertheless *in view of the facts as disclosed in the petition and the appendices hereto* those principles are not applicable." (Italics supplied.)

Thus respondents even now say that the opinion as rendered by Your Honors, on the basis of the record facts, is correct. This admission, plus Rule 52 of Civil Procedure closes completely all factual questions in the case.

In their attempt to minimize the facts of that record, some supposed papers (the validity of which is unknown to the Court Trustee), are now mentioned for the first time, disguished as a "Petition for Rehearing." These supposed papers, although presumably in respondents' possession for some eight years, were never presented or shown to the trial court, nor disclosed to the Court Trustee by any of the respondents. Almost four years ago the

Court Trustee made written demand upon all respondents for all relevant documents. (P. R. 503, 186, 187.) Not being part of the record of this cause, even if the matter mentioned by Petition for Rehearing was relevant, such matter is forbidden at this late date, after the case has been fully heard and disposed of by the District Court, the Circuit Court of Appeals and the Supreme Court of the United States.

Respectfully submitted,

WEIGHTSTILL WOODS,
Counsel for Court Trustee.

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FILED
FEB 28 1941.
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

Nos. 281 and 282

281 WEIGHTSTILL WOODS, COURT TRUSTEE, *Petitioner,*

vs.

CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO, ET AL.

282 WEIGHTSTILL WOODS, COURT TRUSTEE, *Petitioner,*

vs.

CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR REHEARING.

VINCENT O'BRIEN,
JOHN MERRELL BAKER,
TRACY WILSON BUCKINGHAM,
Attorneys for Petitioners-Respondents.

THE GUNTHORP-WARREN PRINTING COMPANY, 810 WEST JACKSON, CHICAGO

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

Nos. 281 and 282.

WEIGHTSTILL WOODS, COURT TRUSTEE,
Petitioner,

281

vs.

CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO, ET AL.

WEIGHTSTILL WOODS, COURT TRUSTEE,
Petitioner,

282

vs.

CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR REHEARING.

Now come the respondents, City National Bank and Trust Company of Chicago, as Successor Trustee, *et al.*, by their attorneys, and present this their petition and ask that a rehearing be granted to them in the above entitled cause, and that upon such rehearing the judgment of the Circuit Court of Appeals be affirmed. Respondents present herewith their suggestions in support of this petition.

VINCENT O'BRIEN,
JOHN MERRILL BAKER,
TRACY WILSON BUCKINGHAM,
Attorneys for Respondents.

SUGGESTIONS.

As we understand the court's decision, all compensation is denied respondents because of their representation of alleged dual or conflicting interests.

As to the City National Bank and Trust Company, the grounds are:

1. That it formed and dominated the Committee, two members of which were officers of the bank and two of which were officers or employees of one of the underwriters, and at the same time acted as Successor Trustee under the mortgage indenture.

2. That that underwriter not only owned common stock of the debtor company but was later claimed to have been liable for alleged circular misrepresentations.

3. That it was also Indenture Trustee for adjoining properties and dominated the Committees representing them, although the property of the debtor company was selling service to the other two.

As to counsel, the grounds are:

(a) That they represented both the Indenture Trustee and the Committee in the case of the Granada.

(b) That they represented the Indenture Trustee and the Committees for the adjacent properties.

(c) That they had acted as general counsel for Chicago Trust Company, one of the underwriters whose prospectus was under attack in these proceedings.

Because of the prior representation of these conflicting interests, both the Bank and counsel are denied compensation, not only for services rendered while the conflict existed, but also for the services rendered in the 77B proceedings, where there was no conflicting representation.

As to the Point That the Bank Formed and Dominated the Committee, Two Members of Which Were Officers of the Bank and Two of Which Were Officers or Employees of One of the Underwriters, and at the Same Time Acted as Successor Trustee Under the Mortgage Indenture—

There was no contention in the trial court that respondents should be denied compensation on this ground. No mention of it is made in the court trustee's objections (R. 127), nor in the District Court's opinion (R. 761), nor in the detailed and voluminous findings prepared by the court trustee and entered months after the opinion (R. 769). Finding 42 (R. 784) is the only one at all pertinent. The sense of that finding is that it was improper for the Committee, the Bank and counsel to continue to represent more than one of the three adjacent properties. There is no intimation that as to any one of those properties it would have been improper for the Bank to act as Indenture Trustee and at the same time to form and dominate the Committee. Indeed, the inference of the finding is that it was quite permissible for it to do so.

To the extent, therefore, that the decision of this court rests on this point, the respondent is deprived of its day in court. *Lutcher and Moore Lumber Co.* v. *Knight,* 217 U. S. 257, 267; *Magruder* v. *Drury,* 235 U. S. 106; *J. M. Robinson & Co.* v. *Belt,* 187 U. S. 41, 23 S. Ct. 16.

We submit that the court overlooked this point made at pages 26-28, respondents' brief.

Had the point been raised below there would have been both occasion and opportunity to show the circumstances which made it necessary that the Bank so act and precisely what was done to inform the bondholders and to obtain the directions and supervision of the equity court in which the foreclosure proceedings were brought.

As this court has made this point one of the bases of

its opinion, we take the liberty of setting forth not only the law as it then existed, but also what was done by the trustee in order to show that there was nothing improper in the relationship of the trustee and the Committee.

In April of 1933 when the Committee was formed, Section 77B had not been enacted. If, therefore, a reorganization of the property was to be effected, it had to be done under then existing state laws, which meant that in some way and in some form title had to be acquired for the bondholders through state court foreclosure proceedings; for it was a fact *of which the courts took judicial notice* that properties such as the Granada could not then be sold for cash at anywhere near an adequate price at any sale and especially not at a forced sale under a foreclosure decree subject to the fifteen months' redemption period allowed by the laws of Illinois.

During the height of the depression in the real estate market, a number of courts of other jurisdictions, took cognizance of these facts and considering the situation to be emergent held that the Indenture Trustee had the right and was under the duty to bid in at the foreclosure sale for the benefit of all bondholders even though not authorized to do so by the terms of the Indenture and even over the objections of some of the bondholders that they were entitled to obtain their share of the proceeds in cash. See *Silver* v. *Wickfield Farms,* 227 N. W. 97 (Ia., 1929); *Hoffman* v. *Firsi Bond and Mortgage Company of Hartford,* 164 Atl. 656 (Conn., 1933); *First National Bank of Wichita* v. *Neil,* 20 Pac. (2d) 528 (Kas., 1933).

In the latter case the court makes the additional point that the indenture trustee has the same rights as an individual mortgagee in the event of default and that one of the remedies is foreclosure, the trustee having the power to do whatever in its judgment is advisable to be done,—

not for the interest of one bondholder but for the best interests of all ratably, with authority, subject to the control of a court of equity, to adopt measures and to do acts which, though not specified in the trust indenture, are implied in its general directions and are reasonable and proper means for making them effectual.

In Illinois, however, it had always been the law that a trustee had no power to bid in for the bondholders in the absence of an express provision contained in the trust indenture.

Since the trustee could not bid and since there was no cash market, the only way in which the interests of the bondholders could be protected was through the formation of a committee which could acquire the property for the benefit of those who wished to participate and for those reasons the bank caused the Committee to be formed and financed it, for there was no financing available elsewhere. The holdings were small and widely scattered and there were no investors with interests large enough to justify their acting on a committee and with experience enough to contribute anything of value.

After the Committee was organized and on May 4, 1933, the bonds were called for deposit by letter (Appendix A hereto) in which, among other things, the bondholders were informed that the Bank was Indenture Trustee and that two of its officers were members of the Committee, and that the other members were officers of Cody Trust Company, one of the underwriters. The bondholders were told that the furniture litigation was pending in the Supreme Court of Illinois, and that it had been decided by the lower courts adversely to the Indenture Trustee.

Looking at it objectively, the only thing which the Bank could do if the interests of the bondholders were to be protected and enforced was to so form and support the Com-

mittee. See article by Mr. Justice Douglas in Harvard Law Review, February 1934, Vol. XLVII, No. 4, "Protective Committees in Railroad Reorganizations."

Nor, in forming the Committee, was it the Bank's purpose to perpetuate its own control or to protect itself from attack by the bondholders or to enhance its opportunities for profit. Any thought that there was intent to conceal the facts in relation to the furnishings is negatived by the letter, Appendix A. The record here shows that the Committee members were to get no compensation, that the Bank's charges for personnel and facilities furnished the Committee were at cost (R. 469), and that the great bulk of the properties which it was servicing were reorganized and that when they were the Bank surrendered possession as Trustee and has nothing to do with management, directly or indirectly. Moreover, in the Greenebaum issues, on some of the largest properties in Chicago, the Bank as Indenture Trustee, though requested, refused to enter into possession, although the management fees were much greater than those in this case. When 77B became operative the Bank cooperated in bringing many of its corporate reorganizations to the federal court. See respondents' brief, pages 56, 57, and R. 434.

Although, as we above pointed out, the law of Illinois had always been that an indenture trustee was without power to bid for the bondholders, in December of 1933 the Appellate Court of Illinois, in *Straus* v. *Chicago Title and Trust Company*, 273 Ill. App. 63, followed the decisions of the states above mentioned and held that in effect such proceedings, although nominally for foreclosure, were really actions for the enforcement of a trust of an active nature and that under circumstances requiring the exercise of such power the court might direct the trustee to act in a manner deemed for the best interests of the bondholders, including a trustee bid for all bondholders, notwithstanding that such action would not involve a cash sale.

Shortly afterwards, the Securities Act was amended to provide for exemption from registration of securities issued pursuant to a plan of reorganization approved by a court of competent jurisdiction, after notice to all persons to whom securities were to be issued of the hearing for approval at which they were entitled to appear and to be heard.

In this situation, the Indenture Trustee entertained genuine doubts as to what its powers were,—whether it should permit the property to be sold to the highest bidder for cash, whether it, itself, could and should bid in for all of the bondholders, or whether it would be better that the property be acquired pursuant to a Plan of Reorganization open to all bondholders to be submitted to and approved by the Court.

Accordingly, in July of 1934 it amended its cross-complaint for foreclosure (See Appendix B) and sought the directions and instructions of the court as to whether it should bid and if it should not, the approval of such Plan of Reorganization, if any, as might be adopted by the Committee and of the terms and conditions of the issuance or exchange of any securities under such plan, the plan to be carried out under the supervision and directions of the court. The Committee members were joined as defendants and a group of non-depositing bondholders were joined as representatives of the whole numerous class.

By October of 1935, the Illinois Supreme Court in *Chicago Title and Trust Company* v. *Robin,* 361 Ill. 261 reversed the Appellate Court and held that the Trustee was without power to bid in for the bondholders in the absence of authority contained in the Trust Indenture.

In view of this the decree of sale thereafter entered in the Granada foreclosure case did not direct the Trustee to bid, but did make the following provision:

"It is further ordered, adjudged and decreed that if

it is the intention of said Committee acting under that certain Deposit Agreement dated April 26, 1933, relating to the bonds and interest coupons secured by said cross-complainant's said trust deed, or of any Committee now properly organized for the protection of the securities intended to be effected by said trust deed, to purchase the said real estate and premises involved herein and hereinabove described, pursuant to any plan or agreement of reorganization, that then prior to the time of sale the plan or agreement of reorganization be submitted to this court so that this court may determine whether or not the plan or agreement of reorganization is fair and reasonable and whether or not the terms and conditions of the issuance and exchange of securities pursuant to said plan or agreement of reorganization are fair and reasonable, and the court does hereby reserve jurisdiction to pass upon such matters and things and to provide for such notice as the court may deem proper to all persons to whom it is intended to issue securities in exchange or otherwise pursuant to such plan or agreement of reorganization." (Unprinted transcript, page 1059.)

Prior to the current 77B proceedings there was, of course, no plan adopted by the Committee and therefore no occasion to invoke the jurisdiction of the state court as above reserved.

Since the Committee as early as May, 1933 had already informed the bondholders that some of its members were officers of the Indenture Trustee and that others were officers of Cody Trust Company and since under the provisions of the Securities & Exchange Act and the Regulations relating thereto it was required that any plan disclose the affiliations of the Committee members, their interest, if any, in the securities of the Granada, and other relevant data, and since from the plain language of the amendment (Appendix B hereto) and of the above quoted portion of the decree, court approval of any plan was to be procured, it is not to be supposed that all of the facts would not have been disclosed to the court had a plan been

adopted, including the relationship of the Committee members to the Trustee and to one of the underwriters and the fact that Cody Trust Company owned 1000 shares of the common stock when it went into receivership in December of 1933.

Any sale under the decree was of course subject to the confirmation of the court without necessity for reservation of jurisdiction. Had the point been in issue, we would have shown that under existing state court practice the courts required an independent appraisal by the Chicago Real Estate Board in relation to any motion for the confirmation of a sale in bond issue foreclosures although it was true, as we have said, that there was no cash market in which anyone but the Committee would bid anywhere near the value. The Supreme Court of Illinois in *First National Bank* v. *Bryn Mawr Beach Bldg. Corp.*, 365 Ill. 409, 425, had laid down a formula for determining values to be accepted in such matters. The purpose of the appraisal was to satisfy the court that the amount of the bid plus the unpaid general property taxes, if any, was up to the fair economic value of the property. And we respectfully submit that the Committee "dominated" by the Bank, which was interested in all the investors, was more likely to make a fair bid than a committee completely independent of the Bank and interested in getting the property at the very lowest price.

We submit, therefore, that even if it be the rule that a bank ordinarily may not act as indenture trustee and at the same time sponsor a plan promulgated by a committee which it formed, nevertheless that action could be properly taken if, as in this case, the circumstances required it, and disclosure was made to the bondholders and to the court and court approval was obtained. On principle, the situation is no different than that referred to in Section 170.7 of Scott on Trusts relating to the purchase by a trustee

of trust property at its own sale,—generally improper, but permissible if done with the approval of the Chancery Court.

Scott says:

> "The reason why the permission or approval of the court is sufficient to justify a sale of trust property to the trustee personally is that a court of equity is a court having general supervision over the administration of trusts, and if the parties are properly represented before it, it has authority to authorize what would otherwise not be permissible."

We thus see that neither actually nor potentially was there any wrong in the fact that the trustee formed and dominated the Committee so far as any state court proceedings were concerned. And we submit that the application made by this court of the general principles concerning conflicts of representation appears all the more harsh when it is considered that this point was not raised below and that respondents therefore had no occasion to bring forward the facts herein mentioned which must necessarily be taken into consideration in exercising an equitable and conscionable discretion.

As to the Point That One of the Underwriters Represented on the Committee Not Only Owned the Common Stock of the Debtor Company But Was Later Claimed to Be Liable for Alleged Circular Misrepresentations.

As footnote 5, page 2 of the opinion, shows, Cody Trust Company went into receivership in December, 1933. The record shows that at that time it held 1,000 shares of the common stock of the debtor company. The record does not show when it acquired the common stock. But if there was any conflict of interest on the part of its officers who were members of the Committee, because of stock ownership, that conflict ceased to exist in December of 1933; for title to the stock then passed to the Receiver of Cody

Trust Company who later sold it to persons in no way connected with any of the Committee members (R. 220).

We have shown that by the terms of the decree of sale any plan of reorganization under which the Committee was to acquire the property in the foreclosure proceedings had to be submitted to the state court not only for approval of the plan but for approval of the terms and conditions of the issuance of the securities to be issued thereunder. We have shown that the requirements of the Securities and Exchange Commission were such that full disclosure of the ownership by Committee members, counsel and others connected with the plan, of any of the securities within five (5) years preceding the submission of the plan would have had to have been made in the plan itself. It follows that both the bondholders and the court would have been fully informed on this point under the procedure adopted by the Bank and to which it was irrevocably committed as shown by the above quoted portion of the decree.

If Cody Trust Company in May of 1933 owned any shares of common stock of the debtor company, it is true that the call letter, Appendix A hereto, made no mention of the fact. The letter was signed by the full Committee. If the fact is that at the time of the call letter the Cody Trust Company owned the common stock, then the failure to make disclosure thereof in the call letter might be grounds for disallowance of fees to the Committee members. But the Committee in this case did not request fees and certainly the knowledge of the Cody members of the Committee of the ownership in 1933 of the common stock by Cody, if it was then so owned, cannot be imputed to the City National Bank and Trust Company so as to deprive it of reimbursement for the expenses incurred in servicing the Committee.

As to the alleged circular misrepresentations, we showed

in our brief, pages 39, 48, that the Bank and counsel were without knowledge. As to counsel, this court accepts the statement. Neither this court nor the trial court made any finding that the Bank had knowledge and none would be justified on the record. We showed, at page 57, that even had there been knowledge, neither the Trustee nor the Committee had the right or power to take action, but that any cause of action was personal to those bondholders who were misled. The letter, Appendix A, informed the bondholders of the pending claim of the chattel mortgagee, of the litigation in relation thereto, its unfavorable termination in the lower courts, and of its pendency in the Supreme Court of Illinois.

Under these circumstances we submit that neither the ownership of the common stock for a short time by Cody nor the alleged circular misrepresentation is ground for total denial of compensation and reimbursement to the City National Bank and certainly not ground for denial of fees to counsel.

As to the Point That the Bank Was Also Indenture Trustee for Adjoining Properties and Dominated the Committees Representing Them, Although the Property of the Debtor Company Was Selling Service to the Other Two.

We show at pages 30-37 of our brief that the dealings between these properties did not constitute a breach of trust on the part of City National Bank and Trust Company. It had no interest individually in either property and held none of the securities. Its commissions for managing each property were in no way dependent upon the amount charged for the service furnished by the Granada. Nor did it ask for or receive any compensation for the work which it did in ascertaining the price to be fair. By the authorities cited, we have demonstrated that the situa-

tion was quite unlike that which exists when an agent acts for both buyer and seller in a transaction in which his compensation is dependent upon the consummation of the deal. The sole effect in this case was to put the burden upon the Trustee of showing that the price charged was fair and reasonable. The Court of Appeals found that it was, on the record, and this court accepted that finding in stating at page 2 of its opinion: "We agree with it that on this record recovery on the counterclaim would not be warranted"; for if the bank as trustee of the Granada had not charged enough its account would have been subject to surcharge and the counterclaim to that extent would have had to have been sustained. See Scott on Trusts, Section 170.16.

The cases cited by the court at page 5 of its opinion: *Jackson* v. *Smith*, 254 U. S. 586, 589, and *Weil* v. *Neary*, 278 U. S. 160, 173, are not in point. In the former case the court receiver, acting through two lawyers who were aware of his fiduciary position, without the knowledge of the court, acquired an interest in part of the property under the administration of the court, which interest was immediately resold at a substantial profit—a case of out and out fraud. In the other case, as the court states, there was involved a contract to split fees, which was in direct violation of the Rules in bankruptcy and which no doubt was surreptitiously entered into—again a case involving fraud or moral turpitude.

Even if the situation at bar involved a breach of trust, there was no fraud or moral turpitude involved, and the breach at most was merely technical. Not only that, but the transaction involved but a minute part of the entire administration of two complicated trusts, and therefore should not warrant the total disallowance of fees and reimbursement to the Trustee. Particularly is this true when the trial court's sole opinion reference to the Arlington property was "The burden is on it [City National] to

show that the changes which it made in amounts being charged for that service were warranted. I do not think it has met that burden." (R. 767)—a finding overruled by the Circuit Court of Appeals and said by this court to be without support in the record. In other words, the lower court never made the mere technical breach here involved a basis for the total disallowance of fees.

Only in case of a unitary plan (impossible for reasons shown at pages 16, 17, our brief), could there have been general conflict of interest in representation and in that event the limited conflict in reference to the interhotel services would have disappeared.

As to the Point That Counsel Represented Both the Indenture Trustee and the Committee in the Case of the Granada—

For the same reasons that it was proper for the Bank to act as Indenture Trustee and at the same time to form and to finance the Committee, it was proper for respondent-counsel to act both for the Trustee and the Committee. It is obvious that the primary purpose of all action taken in the state court and intended to be taken there was to acquire the property for the benefit of all bondholders by the only means available at a time when there was no market for cash, with full disclosure to the equity court and under its supervision and control both as to the fairness of any plan and as to the fairness of the price bid. What possible reason could there have been for incurring the expense of separate representation under the procedure which was followed in the state court proceeding?

As to the Point That Counsel Represented the Indenture Trustee and the Committees for the Adjacent Properties—

We have shown that there was no impropriety in the Bank's action in relation to those three properties, and for the same reasons it was proper for the respondent-attorneys to represent the Trustee and the Committees on all three. We have shown also that a conflict could have arisen only had there been a unitary plan of reorganization and that a unitary plan was never possible. See respondents' brief pages 16, 17, 31. That being so, there was no conflict between the several Committees and none in the services which counsel were to render to the Committees and to the Trustee in each foreclosure proceeding on these three separate issues.

As to the Point That Respondent-Attorneys Had Acted as General Counsel for Chicago Trust Company, "One of the Underwriters Whose Prospectus Was Under Attack in These Proceedings,"—

It is true that at the time the Granada bond issue was underwritten respondent-attorneys were general counsel for Chicago Trust Company and that they continued as general counsel for that bank until it was absorbed by The National Bank of the Republic in July of 1929. Respondent-attorneys, however, were never general counsel for The National Bank of the Republic nor for Central Republic Trust Company, which resulted from the consolidation of The National Bank of the Republic and Central Trust Company of Illinois, nor general counsel for City National Bank and Trust Company of Chicago. It is also a fact that the general counsel for Chicago Trust Company did not have to do with all legal matters and proceedings in which the Bank was interested. It had numerous attorneys and it had house counsel. And as respondent-attorneys

have represented and as the court has agreed, respondent-attorneys had nothing to do with the Granada circular.

The court states at page 4 of its opinion "and respondent-counsel had acted as general counsel for one of the two principal underwriters during the financing of the property here involved; and that underwriters' prospectus was under attack in these proceedings."

As we understand it, what the court means is that the Committee or the then Trustee, who were represented by respondent-attorneys, had some action against Chicago Trust Company for whom they had been general counsel, and that therefore there was a clash of interests in their representing the Trustee or the Committee. But, as we have pointed out, Chicago Trust Company had gone out of existence in 1931. Respondent-attorneys were no longer their general counsel and owed them no allegiance. How then, can it be said that the fact that respondent-attorneys had been formerly general counsel for Chicago Trust Company in any way disqualified them from acting as attorneys for the Committee or the Indenture Trustee in the 77B proceedings? Not only so, but, as we have shown, any cause of action on account of the circular misrepresentation was personal to the bondholders. Furthermore, if it was not personal to the bondholders, the cause of action in the 77B proceedings on behalf of the bondholders was vested in the Court Trustee and not in the Committee or Indenture Trustee.

As to Denial of Compensation for Services in the 77B Proceeding.

We submit that while the general principles laid down by the court in its opinion in reference to conflicts of interest are sound, and that while the court may have had some basis on the record alone for concluding that some of those principles were applicable in the instant case,

nevertheless in view of the facts as disclosed in this petition and the appendices hereto those principles are not applicable.

But even if the court, in view of the additional facts adduced, still be of the opinion that there was sufficient conflict of interest, and of important enough character, in the state court proceeding to be the basis for denial of any fees due on account of services there rendered, we submit that there is absolutely no ground for the denial of reimbursement to the bank for use by the Committee of its facilities and personnel and of reasonable compensation to counsel for their services in the 77B proceeding.

The only right which the Indenture Trustee had in the 77B proceeding was to file a claim on behalf of all the bondholders. The Committee had the sole function of formulating, presenting, and obtaining approval of a plan. The conflict, if any, which existed between the Indenture Trustee and the Committee in their functions in the state court proceeding ceased to exist. Likewise, as the only function of the Trustee was to file a claim on behalf of all bondholders, if there had been any conflict of interest in the representation by respondent-attorneys of both the Trustee and the Committee in the state court, that conflict of interest had also ceased.

Likewise, in the bankruptcy court, any conflict that had existed prior to the bankruptcy proceeding as to the sale of inter-hotel services had ceased to exist, for the Court Trustee was the representative of the Granada in those matters.

The record shows that the Committee was more than diligent in performance of its duties and formulated a plan and obtained its confirmation in record time, as well as the assents of its depositing bondholders and other creditors. The record further shows

that after the claims of the Court Trustee against the Committee, the Indenture Trustee, and their counsel had been filed and were under consideration by the court, the Committee was directed by the court to take the steps necessary to carry out the plan as confirmed. What basis then, in view of these facts and circumstances, can there be for denying to the Committee and to the attorneys all compensation on account of the services which they performed in the bankruptcy proceeding?

It is suggested by the court that the incidence of a particular conflict of interest can seldom be measured with any degree of certainty and that the bankruptcy court need not speculate as to whether the result of the conflict was to delay action where speed was essential, to close the record of past transactions where publicity and investigation were needed. But none of these observations are applicable to a determination of the right of the Committee and counsel to compensation for services in the bankruptcy proceeding, for clearly the incidence of any prior existing conflict of interest was not carried over into that proceeding. And certainly any conflict of interest which had existed prior to the institution of the bankruptcy proceedings and which had thereafter ceased to exist could not and did not have the effect to delay action in the bankruptcy court.

We quite agree that had there been a representation of conflicting interests in the bankruptcy proceedings the trial court would have been justified in denying compensation to respondents for the services there rendered. As the matter stands the rule as to denial of compensation is applied in a punitive way. Both in Scott on Trusts, Section 243, and in the American Law Institute Restatement, Trusts, Section 243, the basis for refusal of compensation to a trustee is not in the theory of a penalty but in the theory that payment is not due for services not

properly performed. That theory has been followed in the following cases:

Lydia E. Pinkham Medicine Company v. *Gove*, 20 N. E. (2d) 482, 486 (Mass.).
In re Card's Estate, 9 Atl. (2d) 557, 560 (Pa.).
In re Keen's Estate, 159 Atl. 713, 715 (Pa.).
In re Johnston's Estate, 14 Atl. (2d) 469, 473 (N. J.).
Pierce v. *Dahlgren*, 300 Fed. 268, 272 (C. C. A. 6).
Purdy v. *Johnson*, 248 Pac. 764, 770 (Cal.).

In the case of *Lydia E. Pinkham Medicine Company* v. *Gove*, 20 N. E. (2) 482, at page 486, the court recognizes the rule to be that a trustee who commits a breach of trust or an agent guilty of disloyal conduct thereby imperils his right to compensation, but adds "but the rule is not an inflexible one. Each case must be determined in the discretion of the court with reference to the peculiar factors found to be present. Although pure considerations of public policy have no doubt weighed heavily against fiduciaries who have placed selfish interest above duty, yet the American Law Institute finds the basis for refusal of compensation to a trustee not in the theory of a penalty but in the theory that payment is not due for service not properly performed * * *. Apparently upon similar reasoning a disloyal agent may have compensation which is 'apportioned' by the contract of employment to services properly performed."

Of course, if a breach of trust involves moral turpitude, the foregoing rule would not be applicable and it would be just and equitable that the respondents be denied compensation even for such services as were properly performed. But in this case there was no moral turpitude because the breach of fiduciary duty, if any, was not motivated by self-seeking or self-gain, but was the result of the exigencies of the situation which called for action

of some kind to obtain for the *cestui que trustents* effective results.

Conclusion.

We submit that in view of all the facts and circumstances there were not even technical breaches of trust in this case. But even if there were, no moral turpitude was involved, and to deny all compensation because of technical breaches of trust which affected only a small portion of the services performed is to put denial of compensation on a punitive basis, when the law heretofore has always been that denial of compensation in such cases should be on a compensatory basis.

We therefore submit that if technical breaches were shown it should not have resulted even in denial of all compensation for all of the services performed in the state court proceeding and certainly should not have affected the compensation for services performed in the 77B proceeding. For to do away with all pre-existing distinctions in the results of mere technical breaches and breaches involving moral turpitude is to put them on the same level of conduct.

Respectfully submitted,

VINCENT O'BRIEN,
JOHN MERRILL BAKER,
TRACY WILSON BUCKINGHAM,
Attorneys for Respondents.

CERTIFICATE OF COUNSEL.

I, Vincent O'Brien, one of the attorneys for the respondents, do hereby certify that the above and foregoing petition for rehearing is presented in good faith and not for delay.

APPENDIX A.

BONDHOLDERS' PROTECTIVE COMMITTEE
208 South La Salle Street
Chicago, Illinois

Howard E. Green, Secretary
Franklin 7400

Marley Halvorsen, Ass't Secretary
Randolph 6600

Committee	Depositary
Charles S. Tuttle	Central Republic Trust Company
Edward S. Clark	Room 440, 208 South La Salle Street
Lewis W. Riddle	Chicago, Illinois
W. G. Sturm	

May 4, 1933.

To the Holders of

The Granada

(Unsubordinated) First Mortgage Six Per Cent Real Estate Gold Bonds, dated September 1, 1928
Executed by Granada Hotel Corporation

These bonds were originally issued in the principal amount of $525,000, of which certain bonds of the final maturity totalling $25,000 were expressly subordinated at the outset to the remaining bonds as to the lien of the trust deed given to secure the issue. $486,500 of the unsubordinated bonds and all of the subordinated bonds are now outstanding. This letter is directed to the holders of the unsubordinated bonds only.

Default has been made in the payment of the March 1, 1932, September 1, 1932, and March 1, 1933, interest coupons pertaining to unsubordinated bonds in the total amount of approximately $43,100, and also in the payment

of the principal of unsubordinated bonds which matured on the same dates amounting to $24,000.

The unsubordinated bonds were underwritten jointly by Chicago Trust Company (since succeeded by Central Republic Trust Company) and Cody Trust Company, $300,000 of bonds being offered by Cody Trust Company and $200,000 by Chicago Trust Company. Central Republic Trust Company is Successor Trustee under the Trust Deed executed by Granada Hotel Corporation to secure these bonds.

The property covered by this Trust Deed, commonly known as The Granada, located at 525 Arlington Place, Chicago, Illinois, is a five story and basement fireproof apartment hotel, containing 114 suites of one, two, three and four rooms, each with bath.

In the summer of 1930 action was commenced to partially foreclose a second mortgage on this property. A receiver was appointed in that proceeding under an order providing for the continuation of the existing management and the payment to the receiver of the net income from the property after the payment of operating expenses. Statements furnished by the receiver show that the net income thus paid to the receiver has, except for a small current balance, been paid over by it to Central Republic Trust Company, as Trustee, under orders of court directing its application on interest and principal installments maturing on these bonds on September 1, 1931, and prior thereto, and also in reimbursement of the Trustee for certain advances made by it in respect of these bonds.

The net income applied in this manner to meet the interest and principal requirements of these bonds has, how-

ever, been inadequate for that purpose. Annual interest at 6% on the outstanding unsubordinated bonds amounts to $29,190, and fixed prepayments are now $17,500, a total of $46,690.

As an incident to this foreclosure action the right of the holder of a chattel mortgage covering some of the furnishings and equipment in the building to remove such property pursuant to a foreclosure sale under the chattel mortgage has been contested by the Trustee under the Trust Deed securing these bonds on the ground that the property in question is part of the real estate covered by that Trust Deed. This contest has been decided by the lower courts adversely to the Trustee, and a review by the Supreme Court of Illinois is now being sought.

In addition to the defaults in the payment of interest and principal maturities, unpaid taxes on this property have accumulated over several years. Total general property tax liabilities, exclusive of interest and penalties, have been reported as follows:

1928 (property sold for non-payment)	$ 8,692.30
1929 (protested)	10,222.40
1930 (protested)	11,199.06
1931 (recently billed, protested)	10,431.38
Total	$40,545.14

Taxes for 1932 and 1933, although not yet payable, constitute liens against the property which, together with liens for past due taxes, take priority over the lien of the trust deed securing these bonds. Cody Trust Company purchased and now holds the certificate of sale for 1928 taxes.

In view of these defaults, accumulated tax liabilities and the apparent inadequacy of the net income from the property, it has been deemed necessary to form a Committee for the protection of the holders of the unsubordinated

bonds, and to call for the deposit of these bonds with Central Republic Trust Company, 208 South La Salle Street, Chicago, Illinois, Depositary for the Committee.

The Committee has been constituted under a Deposit Agreement dated April 25, 1933. Holders of unsubordinated bonds who deposit their bonds become parties to that Agreement. Copies of the Agreement are on file with the Depositary and with Cody Trust Company, 105 South La Salle Street, Chicago, Illinois, where they may be examined by any holder of these bonds.

It is anticipated that action to foreclose the Trust Deed securing these bonds may be instituted by the Trustee in the near future and this Committee will probably find it advisable to develop some plan for the reorganization of the financial structure of this property.

Mr. Tuttle and Mr. Sturm are Vice Presidents of Central Republic Trust Company and Mr. Riddle and Mr. Clark are President and Assistant Secretary, respectively, of Cody Trust Company. The Deposit Agreement provides that the members of the Committee shall receive no compensation for their services.

The speed with which plans for protecting the interests of holders of these unsubordinated bonds can be formulated will depend largely upon the promptness with which the bonds are deposited. We feel that it is important for the protection of your interests that you send your bonds to the Depositary promptly.

For your convenience, we enclose herewith a blank form of Letter of Transmittal to be used in this connection. Full instructions as to how to fill out this Letter are given on the reverse side.

As soon as possible after receipt of your bonds (accompanied by such Letter of Transmittal) the depositary will

mail to you a transferable certificate covering the bonds you have deposited.

C. S. TUTTLE,
Chairman,
EDWARD S. CLARK,
LEWIS W. RIDDLE,
W. G. STURM.

Holders of bonds payable at
Chicago Trust Company
address all communications to:
HOWARD E. GREEN,
Secretary,
208 South La Salle St.,
Chicago.

Holders of bonds payable at
Cody Trust Company
address all communications to:
MARLEY HALVORSEN,
Ass't Secretary,
105 South La Salle St.,
Chicago.

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APPENDIX B.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

IN THE SUPERIOR COURT OF COOK COUNTY.

In Chancery.

William A. Thuma,
Complainant,
vs.
Granada Hotel Corporation, *et al.*,
Defendants.

Central Republic Trust Company, etc.,
Cross-Complainant,
vs.
Granada Hotel Corporation, *et al.*,
Cross-Defendants.

Bill.
No. 519151.
Cross-Bill.

AMENDMENT TO CROSS-BILL OF COMPLAINT AS HERETOFORE SUPPLEMENTED.

Now comes Central Republic Trust Company, a corporation, as Trustee under Trust Deed recorded in the Recorder's office of Cook County, Illinois, as Document 10161996, and as Chattel Mortgagee under Chattel Mortgage recorded in the Recorder's Office of Cook County, Illinois, as Document B702627, and leave of Court being first had and obtained, files herein this, its Amendment to the Cross-Bill of Complaint as heretofore supplemented as follows:

1. Immediately following Paragraph 7 of the original cross-bill of complaint, insert the following:

> "(a) That upon the happening of the defaults hereinabove mentioned the trust evidenced by your orator's said indenture became active. Your orator is advised by counsel, and therefore states the fact to

be, that thereupon it became its primary duty under the terms of said indenture, on proper demand and indemnity, to conserve the trust property for the benefit of the beneficiaries, to-wit: The holders of the bonds and coupons secured by its said indenture, and to administer and distribute the trust estate or the proceeds or avails thereof to the best interests of its said beneficiaries, and on demand by said beneficiaries, accompanied by indemnity satisfactory to your orator, as required in said indenture, to take any action to conserve, protect and enforce all rights under said indenture; and it became its right, at its option, without such demand and indemnity, to take such action if it should see fit so to do. Your orator further avers that one of the methods available to enable it to carry out its primary duty aforesaid is that of foreclosure and sale of the property covered by said indenture to the highest and best bidder for cash, but it is informed and believes and therefore represents the fact to be that proceedings seeking merely the foreclosure of similar indentures securing similar bond issues and sale at public auction to the highest and best bidders for cash have usually failed to result in adequate outside cash bids, and that such failure is particularly prevalent now because of the current depression which has continued for a long time past and still continues not alone throughout the County of Cook but throughout the United States, of which depression your orator prays that the court take judicial notice. Because of the prevailing conditions incident to said depression it has been and still is very difficult to borrow money with which to pay the costs and expenses of foreclosure proceedings, and, in cases in which some of the holders of bonds secured by a trust deed which has been foreclosed have wished to combine directly or indirectly to purchase at foreclosure sale premises covered by such trust deed for the protection of their interests, it has been difficult to provide funds to pay in cash the distributive share of the purchase price of bondholders not wishing to join in such purchase, except in cases in which substantially all of the bondholders have combined to acquire the property at such sale. Under these conditions it is hazardous for a trustee under a trust deed to proceed to a decree of foreclosure which may be executed only by sale of the mortgaged property

to the highest and best bidder for cash, save only in those cases in which the bondholders have not only combined to protect their interests through purchase at the foreclosure sale but have adequate cash to enable them to pay such costs and expenses and to provide for bondholders who do not wish to join in such purchase their distributive share of a bid which is sufficient in amount adequately to protect the interests of the bidders.

"Your orator further represents that it is advised by counsel that the method of sale for cash is but one of the methods available to it in and about the protection, preservation and enforcement of the rights and interests of its said beneficiaries, and that, due not only to difficulties inherent in trusts of this type but also to those arising because of the current depression, other means and methods may be required for the best protection, enforcement, and administration of said trust. Your orator avers that the protection, enforcement, and administration of the said trust and the distribution of the trust estate involve questions concerning the construction and effect of the trust powers conferred upon your orator in and by its said trust indenture or implied by law as necessary to the preservation, enforcement, administration, and distribution of the trust and of the trust property, which questions must be determined and adjudged by this court. Some of such questions are whether your orator is vested with power to bid at any foreclosure sale for and on behalf of all of its beneficiaries and, if so, whether the facts, circumstances, and conditions obtaining in this case require the exercise of such power; whether your orator should permit the property to be sold under existing conditions at public auction to the highest and best bidder for cash or whether the court should specify a price below which the property may not be sold; or whether it is to the best interests of the beneficiaries that a plan or agreement of reorganization or readjustment be formulated, presented, developed, approved, promulgated and adopted, and, if so, whether in such plan participation should, at the instance of the participating beneficiaries, be granted or allowed to persons having claims or any interests junior or senior to those secured by your orator's said indenture, or to any persons having an interest in the trust property or

property used in connection therewith. Moreover, your orator avers that it is advised by counsel and therefore states the fact to be that there is a question as to whether the powers of your orator under the trust indenture in this case should be enlarged, modified or changed because of existing conditions and the circumstances in this case in order to prevent loss to the beneficiaries, and that such question should be presented to and be passed upon by this court. From time to time during the pendency of this proceeding other questions may arise and be presented to this court, the determination of which will require an interpretation of the provisions of the trust indenture.

"Your orator further avers that it is in doubt as to the nature and extent of its powers and duties in the premises and that, in view of the inherent difficulties and of the prevailing conditions confronting it in respect of the protection, enforcement and administration of its said trust, some of which conditions may not have been within the contemplation of the parties to the trust at the time of the creation thereof, and because of its doubts as to the nature and extent of its powers and duties in the premises, it is essential that the provisions of the trust indenture be construed and that the nature and extent of its powers and duties be defined in relation to the existing facts and circumstances.

"By reason of the premises your orator avers that it is essential that it receive the advice, instruction, and direction of this court as to the nature and extent of its powers and duties and as to the exercise of its powers and the course of action to be pursued by it in proceeding to protect and to enforce the trust intended to be effected by its said indenture, which advice, instruction and direction in the premises your orator hereby requests."

"(b). That while your orator, under and by virtue of the terms and provisions of its said trust indenture, is authorized and empowered to act as the representative of the bondholders in and about any proceeding for the foreclosure of the mortgage evidenced thereby, yet, in so far as your orator seeks the construction and definition of the trust evidenced by the said indenture and the advice, instruction, and direction of this court in

respect of the protection and enforcement of the trust, the said beneficiaries, to wit: the holders of the unpaid bonds and interest coupons described in and secured by the said indenture, are necessary and indispensable parties to this proceeding."

"(c). That certain of the bonds secured by your orator's said indenture, with certain unpaid interest coupons pertaining thereto, have been deposited with and are held and owned by C. S. Tuttle, Edward S. Clark, Lewis W. Riddle, W. G. Sturm, and E. A. Kilmer, not individually but as a Committee acting under the certain deposit agreement dated April 26, 1933, relating to the bonds of the issue secured by your orator's said indenture, and that such bonds and the unpaid interest coupons thereunto pertaining are so held and owned by said Committee subject to all the terms and provisions of the said agreement last aforesaid, and that your orator therefore makes the said C. S. Tuttle, Edward S. Clark, Lewis W. Riddle, W. G. Sturm, and E. A. Kilmer, not individually, but as members of the aforesaid Committee, parties defendant to this, its Cross-bill of complaint."

"(d). That the remaining unpaid bonds described in and secured by your orator's said indenture, and unpaid interest coupons pertaining thereto, have not been deposited with, and are not now owned and held by, the Committee aforesaid, but are held and owned by more than one hundred persons; that all and each of said bonds and the unpaid interest coupons thereunto pertaining are payable to bearer, and that accordingly title thereto passes by mere delivery, and that it is impracticable, if not impossible, to determine as of any given date the names and addresses of all of the holders and owners of such bonds and of the unpaid interest coupons aforesaid thereunto pertaining. Your orator further avers that the holders and owners of the bonds and coupons last aforesaid reside in different cities and communities throughout the United States, many without the State of Illinois; that the expense and delay incident to making the holders thereof parties defendant hereto by name and in person would be prohibitive and would tend to impair the administration of justice. But your orator avers that the interests of each and every the holders and owners of the said bonds and coupons not deposited with the said Committee are

common and identical, and that the interest of no one of the holders of such bonds and coupons is in conflict with the interest of the holders of the other bonds and coupons not so deposited; that your orator has selected from the holders and owners of the said nondeposited bonds whose names and addresses are known to your orator a sufficient number thereof, to wit: fourteen (14), who hold and own nondeposited bonds aggregating $11,800.00 in principal amount, truly to represent the interests of the holders and owners of all nondeposited bonds as a class, and hereby makes such persons so selected, to-wit: A. W. Childs, M. M. Kraft, Amanda Jahnke, Grace Tripoli, Hugh Hamill, Eli Goldstein, Mrs. S. E. Lebovitz, W. P. Naumes, Catherine Cline, George H. Tallaksen, Rose Golden, Artie Cowper, Emil Ismaiel, and Esther Settem, parties defendant to this, its Cross-bill of complaint, as representative of all of the holders and owners of said nondeposited bonds as a class, subject, however, to the right of any such bondholder not made party defendant hereto by name to be and become a party defendant hereto by name and to defend this suit in his own behalf."

2. After the name Margaret Schuster appearing in the prayer of the original Cross-bill of complaint, insert the following: C. S. Tuttle, Edward S. Clark, Lewis W. Riddle, W. G. Sturm, and E. A. Kilmer, not individually, but as a Committee acting under Deposit Agreement dated April 26, 1933, relating to bonds of the Granada Apartments issue; A. W. Childs; M. M. Kraft; Amanda Jahnke; Grace Tripoli; Hugh Hamill; Eli Goldstein; Mrs. S. E. Lebovitz; W. P. Naumes; Catherine Cline; George H. Tallaksen; Rose Golden; Artie Cowper; Emil Ismaiel; and Esther Settem, individually and as representatives of all other holders of Granada Apartments bonds similarly situated.

3. Immediately before the words "and that your orator may have such other and further relief as equity may require and to the court may seem meet," appearing on Page 16 at the conclusion of the prayer of the original

Cross-bill of complaint and preceding the prayer for process, insert the following:

"That the Court may determine and find that it has jurisdiction of each and every the parties hereto, including all the holders of unpaid bonds or coupons secured by plaintiff's trust deed, whether such holders are made parties hereto by name or brought in by representation as aforesaid; that the court may find that it has jurisdiction of the subject matter hereof, including jurisdiction of any plan or agreement of reorganization or readjustment or for the protection, preservation, or distribution of the trust property, including any amendment to such plan or agreement; that the Court may find that it has jurisdiction to determine the fairness of the terms and conditions of the issuance or exchange of any securities to be issued pursuant to such plan or agreement or amendment thereof, and of any certificates of deposit issued by the said Committee or its depositary to holders of bonds or interest coupons issued under said indenture, or any of them, and that the Court may find that it has jurisdiction to approve the said plan of agreement or amendment thereof, and to approve the terms and conditions of the issuance or exchange of any such securities or certificates of deposit.

"That the Court may determine the nature and extent of the powers and duties devolving upon the plaintiff in the premises by reason and by virtue of its trust indenture aforesaid and the conditions and circumstances obtaining in respect of the trust property, and that to that end the Court may determine and define the provisions of the trust indenture creating such powers and may determine and define those powers, if any, existing by implication of law on account of the facts and circumstances now existing, and that in that regard the court may also determine the existence of the emergency hereinabove referred to and its effect, if any, upon the trust, its administration and liquidation, and that it may generally hear and determine all questions which may exist or which may be raised in relation to the said trust, its administration, or liquidation, and may instruct and direct the plaintiff as to its powers, duties, and obligations in the premises.

"That the Court may inquire into all the facts and circumstances relating to the preservation and enforce-

ment of the trust and the distribution of the trust property, and then determine whether a sale of the mortgaged property should be decreed to the highest and best bidder for cash, or whether the court should specify in its decree a price below which the property may not be sold, and authorize and direct your orator to bid at any foreclosure sale for the benefit of its beneficiaries an amount equal to the price so specified unless someone else bids that amount or more, if it be found that your orator has the power so to bid and that the existing facts and circumstances call for the exercise of such power; that the Court prescribe in its decree the means and method to be employed in the administration, liquidation or distribution of the trust property in the event that the plaintiff does so bid; that the Court further determine whether it is for the best interests of the said beneficiaries that a plan or agreement of reorganization, readjustment, or liquidation be formulated, presented, developed, approved, promulgated, or adopted as the best means to protect and enforce the rights and interests of the said beneficiaries, and in such case that the Court may examine and inquire into any such plan or agreement, determine whether participation in such plan or agreement may at the instance of the participating beneficiaries be given to interests and claims other than those secured by the plaintiff's said trust indenture; that the Court may determine whether such plan or agreement, or the terms and conditions of the issuance or exchange of any securities to be issued pursuant to such plan or agreement, or of any certificates of deposit issued by said Committee or its depositary to holders of bonds or interest coupons issued under said indenture are fair and equitable, and if so, that it may approve such plan or agreement and the terms and conditions of the issuance or exchange of any such securities or certificates of deposit, and that if such approval be decreed the Court reserve a continuing jurisdiction to insure the carrying out of such plan in the event that the mortgaged property is purchased in pursuance thereof at any sale that may be had herein.

"That in any accounting to be taken herein there be fixed and allowed to your orator as additional indebtedness secured by the lien of its said trust indenture prior to the lien thereof as security for the payment

of bonds and coupons thereby secured and in addition to the items hereinabove prayed to be allowed on the taking of such accounting, any and all sums advanced by your orator pursuant to the provisions of its said trust deed or to any decree or order of court herein for any purpose authorized or permitted by the terms and provisions of said trust deed, decree, or order, with interest thereon at the rate of seven per cent (7%) per annum from the time of such advance or disbursement until reimbursement therefor, and also for any and all special fees and expenses of your orator and of its counsel incurred in and about the protection, enforcement, administration, and liquidation of its said trust, and that any and all sums so fixed and allowed in any accounting be decreed to be secured by a valid and subsisting first lien upon the trust property, the proceeds, avails, and income thereof, prior to the lien of the holders of bonds and coupons secured by your orator's said trust deed, and that prior to the transfer or disposition of such trust property adequate provision be made by the court for the protection and security of your orator's said lien."

CENTRAL REPUBLIC TRUST COMPANY, as Trustee,

By .....,
Its Solicitors.

.....,
Solicitors for said Cross-Complainant.

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SUPREME COURT OF THE UNITED STATES.

Nos. 281 and 282.—October Term, 1940.

281	Weightstill Woods, Court Trustee, Petitioner, *vs.* City National Bank and Trust Co. of Chicago, et al.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.
282	Weightstill Woods, Court Trustee, Petitioner, *vs.* City National Bank and Trust Co. of Chicago, et al.	

[February 3, 1941.]

Mr. Justice Douglas delivered the opinion of the Court.

The basic question involved in this case concerns the power of the District Court in proceedings under Ch. X of the Chandler Act[1] (52 Stat. 840) to disallow claims for compensation and reimbursement on the grounds that the claimants were serving dual or conflicting interests. The claimants, respondents here, are an indenture trustee, a bondholders' committee, and the committee's counsel. Counsel to the committee was also counsel to the indenture trustee; and its services in the latter capacity were included in the claim of the indenture trustee. The bankruptcy trustee appeared in opposition to the allowance of these claims, and counterclaimed against the indenture trustee seeking to surcharge it for various alleged acts of misconduct and negligence. The indenture trustee answered. There

[1] This reorganization started with foreclosure proceedings in the Illinois state court and later was transferred to the United States District Court upon the filing of petitions under § 77B of the Bankruptcy Act. Pursuant to § 276(c)(2) of the Chandler Act, the bankruptcy court made that chapter applicable to the allowance of these claims. The claims under review cover not only the proceedings under § 77B but also the earlier state court proceedings. Though some of the allowances here in issue apparently had been fixed by the state court prior to the transfer of the proceedings to bankruptcy, respondents agreed to submit the claims *de novo* to the District Court.

was a hearing on the claims and on the counterclaim. The District Court disallowed the claims "for want of equity"; and allowed the counterclaim only as a recoupment to extinguish any claims of respondents. On appeal the Circuit Court of Appeals reversed. 111 F. (2d) 834. It held that there was no conspiracy to defraud, nor substantial evidence of mismanagement or negligence on the part of respondent-trustee. It thereupon remanded the cause to the District Court, indicating that the out-of-pocket expenses should be allowed in full and that the reasonable and customary charge for services so rendered should govern the claims for compensation. We granted the petition for writs of certiorari[2] in view of the importance in reorganization proceedings of the power of the District Court over such allowances.

We are not inclined to question the conclusion of the Circuit Court of Appeals on the issue of fraud. We agree with it that on this record recovery on the counterclaim would not be warranted. But we do not believe it was justified in disregarding the evidence and findings of fact as respects respondents' dual or conflicting interests in this reorganization.

The property here involved is an apartment hotel—Granada Apartments, Inc. A committee was formed by the respondent-trustee[3] to represent the first mortgage bonds in the reorganization. It was composed of five members. Two of these were officers or employees of one of the principal underwriters of the bonds.[4] This underwriter was heavily interested in the equity.[5] So far as appears, that fact was not disclosed when the committee solicited the bondholders. In any event, the equity owner is peculiarly ill-suited to represent the mortgagee in these situations because of their historic clash of interests. See *Case* v. *Los Angeles Lumber Products Co.*, 308 U. S. 106. Furthermore, a rather serious question was raised

[2] The two cases raise the same question. One represents an appeal to the Circuit Court of Appeals as of right; the other an appeal with leave. They were taken prior to our decision in Dickinson Industrial Site *v.* Cowan, 309 U. S. 382. And see Reconstruction Finance Corp. *v.* Prudence Securities Advisory Group, No. 69, decided Jan. 6, 1941.

[3] Not then the trustee under the indenture.

[4] A third member was also a distributor of the bonds when they were publicly offered.

[5] This underwriter—Cody Trust Co.—went into receivership in December, 1933, the Granada bondholders' committee having been formed in April, 1933. The District Court found that nominees of Cody Trust Co. operated the property until January, 1934.

early in this reorganization concerning alleged misrepresentations by the underwriters on the sale of the bonds that the furnishings of the hotel were covered by the mortgage. It turned out that they were not; and bondholders' money was used to satisfy the lien outstanding against them.[6] Objective scrutiny and full enforcement of an underwriter's liability requires a committee freed from that underwriter's influence.

The committee was closely affiliated with the respondent-trustee, which, as we have noted, caused its formation. And respondent-trustee was in turn later appointed as successor trustee under the mortgage on petition of the committee. The committee had as its two most active members officers of the indenture trustee. It was in substance a part of the indenture trustee's reorganization division.[7] The indenture trustee was the committee's depositary; it would receive any fees accruing to the committee. Indenture trustees themselves have frequently condemned such entanglements with committees.[8] The indenture trustee represents all the bondholders; the committee those who have given it authorizations — in this case about 50 per cent. Where the interests of majorities and minorities do not coincide, the interests of the indenture trustee and the committee will tend to be antagonistic.[9] Beyond that is the fact

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The reorganization began with a foreclosure proceeding in the state court. The indenture trustee, predecessor of respondent trustee, later took possession and employed a so-called agent at $50 per month "to keep Cody Trust Company informed as to the status from time to time."

[6] Certain phases of the litigation involving this question are revealed in Thuma *v.* Granada Hotel Corp., 269 Ill. App. 484; Wenstrand *v.* Pick & Co., 38 F. (2d) 25; In re Granada Apartments, Inc., 104 F. (2d) 528.

So far as appears no effort was made in this reorganization to assert any claim against the underwriters.

[7] That division had handled over 400 reorganizations, having been formed to act in connection with defaulted bond issues underwritten by Chicago Trust Co. and Central Trust Co. of Illinois. Chicago Trust Co. was one of the underwriters of the Granada bonds.

[8] Utter, Problems of Trustees Under Defaulted Bond Issues, 56 Trust Companies 653 (1933); Littleton, Administration Problems Under Corporate Trusteeship, *id.*, 335, 338.

[9] Utter, *op. cit. supra* note 8, pp. 656-657. That antagonism was best illustrated in foreclosure reorganizations where the minority was not bound to accept new securities but could insist on cash. See Weiner, Conflicting Functions of the Upset Price in a Corporate Reorganization, 27 Col. L. Rev. 132. In the instant case the reorganization proceeding was in the state court from June, 1930 when a receiver under the second mortgage was appointed to May, 1937 when petitions under § 77B of the Bankruptcy Act were approved. For an earlier and unsuccessful attempt to place this company under § 77B see Tuttle *v.* Harris, 297 U. S. 225. Respondent-indenture trustee became such in January, 1935. It was in possession from then until May, 1937.

that an indenture trustee closely affiliated with a committee shares the committee's conflicts of interest.

In this case the indenture trustee was also indenture trustee for neighboring apartment properties and dominated the committees representing the bonds of those other companies. Two members of respondent committee were also members of one of those other committees. There was no unitary plan of reorganization for these several properties. But there were dealings between them by their common representatives—dealings attacked by petitioner as unfair to the instant company and defended by respondents as fair.

That is not all.

Counsel to the committee was not only counsel to the indenture trustee in this reorganization; it was also counsel to the indenture trustee and the committees for the neighboring properties. And respondent-counsel had acted as general counsel for one of the two principal underwriters[10] during the financing of the property here involved; and that underwriter's prospectus was under attack in these proceedings.[11]

Under Ch. X of the Chandler Act the bankruptcy court has plenary power to review all fees and expenses in connection with the reorganization from whatever source they may be payable.[12] Reasonable compensation for services rendered may be allowed.[13] The claimant, however, has the burden of proving their worth. Furthermore, "reasonable compensation for services rendered" necessarily implies loyal and disinterested service in the interest of those for whom the claimant purported to act. *American United Mutual Life Ins. Co.* v. *City of Avon Park*, No. 31, decided Nov. 25, 1940. Where a claimant, who represented members of the investing public, was

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10 Chicago Trust Co., which was also the original indenture trustee.

11 Respondent-counsel denies that it acted as counsel in that particular transaction or knew of the alleged misrepresentation in the prospectus at the time, and asserts that it did not learn of the contents of the circular until a question was raised concerning it during this reorganization proceeding. We accept its version of the facts.

12 Sec. 221(4) provides: "The judge shall confirm a plan if satisfied that . . . all payments made or promised by the debtor or by a corporation issuing securities or acquiring property under the plan or by any other person, for services and for costs and expenses in, or in connection with, the proceeding or in connection with the plan and incident to the reorganization, have been fully disclosed to the judge and are reasonable or, if to be fixed after confirmation of the plan, will be subject to the approval of the judge; . . . ."

13 Indenture trustees, committees, and their attorneys are included among those to whom the compensation may be allowed. § 242.

serving more than one master or was subject to conflicting interests, he should be denied compensation. It is no answer to say that fraud or unfairness were not shown to have resulted. Cf. *Jackson* v. *Smith*, 254 U. S. 586, 589. The principle enunciated by Chief Justice Taft in a case involving a contract to split fees in violation of the bankruptcy rules, is apposite here: "What is struck at in the refusal to enforce contracts of this kind is not only actual evil results but their tendency to evil in other cases." *Weil* v. *Neary*, 278 U. S. 160, 173. Furthermore, the incidence of a particular conflict of interest can seldom be measured with any degree of certainty. The bankruptcy court need not speculate as to whether the result of the conflict was to delay action where speed was essential, to close the record of past transactions where publicity and investigation were needed, to compromise claims by inattention where vigilant assertion was necessary, or otherwise to dilute the undivided loyalty owed to those whom the claimant purported to represent. Where an actual conflict of interest exists, no more need be shown in this type of case to support a denial of compensation.

Protective committees, as well as indenture trustees, are fiduciaries. *Bullard* v. *City of Cisco*, 290 U. S. 179; *Jewett* v. *Commonwealth Bond Corp.*, 241 App. Div. 131; *Bergelt* v. *Roberts*, 144 Misc. 832, aff'd 236 App. Div. 777; *Carter* v. *First Nat'l Bank*, 128 Md. 581. Cf. *Nichol* v. *Sensenbrenner*, 220 Wis. 165. A fiduciary who represents security holders in a reorganization may not perfect his claim to compensation by insisting that although he had conflicting interests, he served his several masters equally well or that his primary loyalty was not weakened by the pull of his secondary one. Only strict adherence to these equitable principles can keep the standard of conduct for fiduciaries "at a level higher than that trodden by the crowd." See Mr. Justice Cardozo in *Meinhard* v. *Salmon*, 249 N. Y. 458, 464.

The findings of the District Court that these claimants represented conflicting interests are amply supported by the evidence.

Some discrimination, however, is necessary in applying the foregoing rule to claims for expenses. Reimbursement for "proper costs and expenses incurred in connection with the administration" of the estate may be allowed.[14] The rule disallowing compensation because of conflicting interests may be equally effective to bar recovery of the expenditures made by a claimant subject to conflict-

[14] Sec. 242.

ing interests. Plainly expenditures are not "proper" within the meaning of the Act where the claimant cannot show that they were made in furtherance of a project exclusively devoted to the interests of those whom the claimant purported to represent. On the other hand, those expenditures normally should be allowed which have clearly benefitted the estate. Scott on Trusts (1939), § 245.1. Thus where taxes have been paid, needful repairs or additions to the property have been made, or the like, equity does not permit the estate to retain those benefits without paying for them. Such classification of expenses, at times difficult, rests in the sound discretion of the bankruptcy court. The District Court drew no such distinction but proceeded on the theory that reimbursement for all expenses must be denied. But it is not apparent that all of them fall within the prohibited category.

The other points raised by petitioner are so plainly without merit that they do not warrant mention.

For the reasons stated we reverse the judgment of the Circuit Court of Appeals and remand the cause to the District Court for further proceedings in conformity with this opinion.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.